

No. 11692

United States
Circuit Court of Appeals

For the Ninth Circuit

P. G. DENSON,

Appellant,

vs.

IRENE GLADYS MAPES, also known as Mrs.
Charles W. Mapes, Charles W. Mapes, Jr.,
Gloria Mapes and Chas. W. Mapes Company,
a co-partnership.

Appellees.

Transcript of Record

In Two Volumes

VOLUME II

Pages 457 to 942

Upon Appeal from the District Court of the United States
for the District of Nevada

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PAUL P. O'BRIEN

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(Testimony of Mrs. Charles W. Mapes.)

signed it with her eyes open and through understanding, hasn't anything to do with whether it is fair or not. The fairness and equity of it is a matter to be determined, I apprehend, not upon consideration of what the parties understood at the time. They may have fully understood or only partially understood it, but it is to be determined on consideration of what the results of the contract would be, how it will operate, whether it will be equitable [473] and fair and reasonable. That is the allegation in the complaint, and that is the test. It has to be fair and reasonable and equitable to both parties before it can be specifically enforced. What they understood and who they talked to and what Tom, Dick and Harry on the outside understood, is entirely immaterial. If the contract will produce a return that will pay on the investment, a proper return, that your Honor will find on that basis as will be fair, reasonable and equitable, that is the real test and that did not operate inequitably in other respects, but as to whether they knew and understand that they were signing has absolutely nothing to do with it. Whether the attorney talked to somebody, has nothing to do with it. Whether it is a fair and equitable contract, is the question I am making.

The Court: The objection is good as to indefiniteness of time. It doesn't show when.

Mr. Platt: I mean prior to the execution of the contract.

The Court: Objection is overruled and answer

(Testimony of Mrs. Charles W. Mapes.)
the question. It is understood it relates to time shortly prior to the execution of the contract.

A. No.

Q. Was the question of the rental values, as shown by the percentages of gross receipts, discussed immediately prior to the execution of the contract with Mr. Denson, the plaintiff in [474] this action.

Mr. Cooke: Objected to upon the ground it is within the rule prohibiting evidence of preliminary negotiations where a contract is finally signed and all merged together, and it is immaterial and irrelevant and any evidence whatever as to what the contract means, as to what they said or talked about, is objectionable.

The Court: The objection is overruled. You may answer the question.

A. As to the different percentages?

Q. Yes.

A. No, it wasn't discussed actually as to the different percentages, no.

Q. Well, when these percentages were submitted to you, did you offer any objection to them?

Mr. Cooke: We object on the same ground, irrelevant and immaterial.

Mr. Platt: I desire to call your Honor's attention to the fact the allegations in their answer indicate, or at least allege, that there was no meeting of the minds, notwithstanding the fact that all of the parties signed this contract, and I am trying to find out whether there was a meeting of the minds.

(Testimony of Mrs. Charles W. Mapes.)

The Court: Objection will be overruled. You may answer the question. [475]

(Question read.)

A. Not to the percentages such as they are set up there, no.

Q. When you signed the contract, as you say on October 4th, at least when Mr. Denson signed it in your presence, did either you or Mr. Cooke offer any objection to the percentage value of rentals?

Mr. Cooke: Objected to as irrelevant and immaterial as to whether any objections were made or not. That contract which was signed, so far as percentages was concerned, is conclusive upon the parties. As to statement of Mr. Platt and the issue as to the meeting of the minds of the parties, that must be determined by the agreement itself and hence the document must be allowed to speak for itself, and we intend to stand upon the proposition that the paper itself shows there was not any meeting of the minds, that was a preliminary agreement, says they will get together later and enter into a lease; that is what we go on. We do not rely on talks had before that, so that the allegations made there about there being no meeting of the minds must finally be determined on the basis of the document itself, because that couldn't be determined by going back to preliminary negotiations, in the absence of fraud or mistake, would have no application here.

(Testimony of Mrs. Charles W. Mapes.)

The Court: The objection will be overruled. Answer the question.

(Question read.) [476]

Q. There is another provision in this agreement, namely: "All rentals payable monthly," did either you or Mr. Cooke, when Mr. Denson signed this contract, offer any objection to that?

Mr. Cooke: Same objection.

The Court: Same ruling.

A. No.

Q. There is a further provision in the contract: "Provided, in the event the said perecentages of gross receipts shall not equal monthly for the coffee shop, dining room and kitchen \$600, for the lounge \$1000, for the sky room \$333.33, for the mezzanine floor banquet room \$150, then in such case the second parties shall make up and pay to the first party the deficiency on any such four classifications so appearing." Did you or Mr. Cooke, when this contract was finally executed, offer any objection to that?

Mr. Cooke: Objected to as immaterial. The witness already stated she fully understood the agreement, read it over; and that is part of preliminary negotiations.

The Court: Objection overruled.

A. No.

Q. Paragraph 6 of this agreement provides that:

"Said lease shall provide that second parties
* * * "which are Mr. Denson and your son Charles

(Testimony of Mrs. Charles W. Mapes.)

“* * * are to execute and deliver to the first party * * *” which is you “* * * a first chattel mortgage covering the furniture, fixtures and equipment placed in the [477] hotel and apartments aforesaid to secure rental payment as provided in said lease.” Did either you or Mr. Cooke at or before the final execution of this contract, object to that provision?

Mr. Cooke: Same objection.

The Court: Same ruling. You may answer the question.

A. No.

Q. Did you or Mr. Cooke object to this provision in the contract at or before the final execution of it, namely: “That after said lease is executed between the parties heretofore and if the second parties fail to fully provide and place said furniture, fixtures and equipment in said hotel rooms and apartments as aforesaid, if they fail to execute a valid chattel mortgage and said security as herein required, then the cash so deposited with the first party” * * * which is you, “* * * shall belong absolutely to the first party as a consideration for her entering into this agreement.” Was there any objection offered to that? A. No.

Q. Paragraph 8 I ask you the same question as to that: “If after said lease is executed between the parties hereto, as above provided, and second parties provide and place furniture, fixtures and equipment in said hotel and apartments as aforesaid and the second parties execute and deliver said

(Testimony of Mrs. Charles W. Mapes.)

chattel mortgage as security as herein required, then the cash so deposited [478] with first party shall belong to and be delivered to said second parties by said first party."

Mr. Cooke: Same objection.

The Court: Same ruling. Answer the question.

A. No.

Q. Calling your attention to paragraph 9 of the agreement, I ask you whether at or about the time of the final execution of this document, you or Mr. Cooke offered any objection to this paragraph: "The second parties, as part of said lease, will guarantee to said first party that the total annual income from the entire building which the first party will receive will be in an amount at least sufficient to cover payments required of the first party for taxes, upkeep, insurance, interest on borrowed money and to amortize the cost of said building within said lease period."

Mr. Cooke: Same objection.

The Court: Same ruling.

A. No.

Q. Mr. Denson and your son Charles, according to this paragraph, guaranteed to pay you an amount sufficient to cover payments required by you for taxes, upkeep, insurance, interest on borrowed money and to amortize the cost of said building within said leased period. Did you or Mr. Cooke object to that?

Mr. Cooke: Same objection.

The Court: Same ruling. [479]

A. As I recall, that took in the stores, didn't it

(Testimony of Mrs. Charles W. Mapes.)

also, that they would make up the difference with the stores included?

Q. Well, in any event, I mean, as a matter of fact, Mrs. Mapes, wasn't the first understanding that the stores were not to be included?

A. Yes.

Q. And you heard Mr. Denson testify here and he testified that he wanted a change made in that paragraph so that the income from the entire building, including the stores, would be comprehended in that paragraph?

A. In that paragraph, yes.

Q. And that you later agreed to that and it was inserted by interlineation as it appears now on this final executed contract?

A. Yes.

Q. With your initials, I take, "IGM" and Mr. Denson's initials, "PGD" on the margin?

A. Yes.

Q. You both initialled on that date, October 4th?

A. Yes, we all agreed to it.

Q. Paragraph 10 provides: "That said lease shall contain all necessary provisions to fully effectuate the intent and purposes of the parties hereto as stated in this preliminary agreement, and also to definitely set forth all usual and necessary conditions, to the end that the rights and interests [480] of each party shall be properly conserved and protected." Did you or Mr. Cooke offer any objection to that paragraph?

Mr. Cooke: Same objection.

(Testimony of Mrs. Charles W. Mapes.)

The Court: Same ruling.

A. No.

(Short recess.)

Mrs. Mapes resumed the witness stand on further examination by Mr. Platt.

Q. In paragraph 5 of this exhibit, which is the agreement, there is a statement: "All rentals payable monthly." Did either you or Mr. Cooke at or about the time this agreement was executed, offer any objection to that?

A. No.

Mr. Cooke: Objected to on the same ground as to the other matters, entirely immaterial, and all objections heretofore to the same question.

The Court: Objection overruled. The question may be answered. I think the question was answered, was it not, Mrs. Mapes?

A. I will answer it now as no.

Q. It was your understanding, Mrs. Mapes, wasn't it, that these provisions in the contract which I have read to you were to be incorporated in a lease later to be executed?

A. No, not necessarily, Mr. Platt. It was my understanding [481] that this agreement was preliminary and at a later date we were to get together and I was supposed to be taken care of in this final—if we agreed to agree on this final contract. That is my understanding.

Q. Well, do you mean to say when Mr. Denson and your son Charles obligated themselves to pay

(Testimony of Mrs. Charles W. Mapes.)

you 5 per cent of gross receipts from food sales, 10 per cent of gross receipts from liquors, wines and beer sales, and 30 per cent of gross receipts from hotel rooms and apartments and to guarantee that if the gross receipts did not equal a particular amount set out in this agreement as I have read to you, and did agree to furnish the hotel suitably and give you a chattel mortgage on the furniture as security for payment of the rent and to guarantee sufficient payments to you so as to pay your taxes and insurance and to amortize the debt within a given period, your own debt, that that wasn't a final agreement? A. No.

Q. Do you mean to say, Mrs. Mapes, that after you had executed this agreement that you reserved the right and the privilege to change this agreement any way you wanted to?

Mr. Cooke: Objected to as irrelevant and immaterial. Whether she did or did not would make no difference. The document speaks for itself.

The Court: Objection overruled. You may answer the question. [482]

A. I signed this as a preliminary agreement, later to get together to agree to agree if we could agree, and that was my understanding and this wasn't definite. This is Mr. Denson's idea. This isn't my idea, Mr. Platt. Mr. Denson brought this paper with these percentages. That isn't my percentage. I think I can put that over clearly to you. This is Mr. Denson's, not my idea.

Q. So did you understand that Mr. Denson was

(Testimony of Mrs. Charles W. Mapes.)

to pay at least his part of twenty thousand dollars, pay you ten thousand dollars?

Mr. Cooke: Objected to as irrelevant and immaterial. The paper speaks for itself.

The Court: Objection overruled.

A. This was Mr. Denson's idea. He was very anxious that we get together on this preliminary agreement. He said it didn't mean anything, it was a preliminary agreement. This was Mr. Denson's idea, as far as amounts of money supposed to be paid, but on this agreement nothing was said who was to pay what or how much of that twenty thousand dollars and he advanced ten thousand himself.

Q. And you took it? A. Yes, I took it.

Q. And you demanded it?

A. I didn't demand it. I accepted it.

Q. And it is so provided in the agreement? [483]

A. That I accept the ten thousand from Mr. Denson?

Q. That is that he and your son were to pay twenty thousand?

Mr. Cooke: Objected to. The agreement speaks for itself.

A. Yes.

Mr. Cooke: Just a moment, Mrs. Mapes, don't answer so quick.

The Court: Objection overruled. You may answer the question.

A. Yes, that there was twenty thousand to be

(Testimony of Mrs. Charles W. Mapes.)

paid on that preliminary agreement. Who was to pay who, it was never discussed.

Q. What did you understand paragraph 1 to mean of the agreement which I read to you: "That in consideration of the terms and for other valuable and sufficient consideration, receipt whereof is hereby mutually acknowledged by the parties, that contemporaneously with the execution and delivery hereof, the second parties shall deposit with the first party the sum of \$20,000 in cash as a guaranty of their good faith and by way of inducement for the first party to enter into this agreement." What did you understand that to mean?

Mr. Cooke: Objected to as irrelevant and immaterial as to what she understood. She signed the document and the document must speak for itself as to what it means.

The Court: Objection overruled. [484]

A. I don't know as I took each paragraph. I was just interested in the fact that was a preliminary paper, that we were later to get together actually to see if we could agree. I don't know as I took each one of these paragraphs.

Q. Were you advised by Mr. Cooke this was only a preliminary document and you were not bound by it at all?

A. That is my understanding.

Q. Did he so advise you?

A. I signed it with that understanding.

Q. Well, did Mr. Cooke advise you that this

(Testimony of Mrs. Charles W. Mapes.)
agreement was preliminary, a piece of paper, and you could violate it any time you wanted to?

Mr. Cooke: Objected to on the ground it calls for privileged communication.

The Court: There may be something to that objection.

Mr. Platt: I submit, if the Court please, counsel can't lie behind a clock like that, not on the state of the pleadings here, because he is a definite party to this agreement; he is a definite adviser of Mrs. Mapes and it is in the testimony that he is and that she acted upon his advice. Certainly we are qualified to bring in evidence to show that she did act upon his advice and that she understood the binding nature of this agreement.

The Court: You may ask her if she acted on the advice of Mr. Cooke, but not ask what the advice of Mr. Cooke was. I think that would be confidential. Objection sustained.

Q. What did Mr. Cook advise you as to the binding nature of this agreement, if he advised you anything?

Mr. Cooke: Objected to on the ground it is irrelevant and incompetent what the advice was, that it is within the rule of privileged communication between attorney and client; that it is irrelevant and immaterial; that there is no issue here as to this contract being made under a mistake or fraud, simply a question of what it means and the black and white of the contract must govern. What

(Testimony of Mrs. Charles W. Mapes.)

Mrs. Mapes understood or what her attorney advised is entirely immaterial.

The Court: Objection sustained.

Q. Were you present in Mr. Cooke's office on the 23rd of September, 1945, when there was submitted for Mr. Cooke's consideration a tentative draft of an agreement?

A. No. You say September 23rd? That is a Sunday, I believe, Mr. Platt. If that is a Sunday, I wasn't. I have the day of September 24th being Monday.

Q. Well, were you in Mr. Cooke's office any time during the month of September, 1945, when Mr. Denson submitted a tentative form of agreement?

A. Yes.

Q. And what day do you say that is, as nearly as you recall?

A. That was my recollection it was September 24th. [486]

Q. Well, did you hear Mr. Denson say to Mr. Cooke, "You put this in legal form"?

A. No. I brought it to Mr. Cooke to have it put in legal form.

Q. Did you tell Mr. Cooke to have it put in legal form?

A. Well, that was my understanding.

Q. Is that your best recollection?

A. Yes.

Q. And why did you tell Mr. Cooke to have it put in legal form?

Mr. Cooke: Objected to as irrelevant and immaterial.

The Court: Objection overruled.

(Testimony of Mrs. Charles W. Mapes.)

A. Well, I don't think it was exactly in legal form. I asked him to do it. I asked him if we were signing this paper that we have it written up in as correct form as we could have it.

Q. You testified first you told Mr. Cooke to put it in legal form and now you say you don't remember whether you told him that or something else. Which is the fact?

A. It was supposed to be brought out as a lawyer and attorney would write it up, that was my intention.

Q. That was your intention? A. Yes.

Q. That a lawyer and attorney would write it up?

A. Yes, put it in a readable form. I wouldn't sign anything from anybody. [487]

Q. On or about the 10th day of November, 1943, your son Charles W. Mapes and your daughter Gloria Mapes executed and delivered to you a power of attorney, didn't they? A. Yes.

Q. And do you know at the time of the execution of that power of attorney what property Gloria and Charles owned in Nevada? A. Yes.

Q. What was it?

A. Do I mention each parcel?

Q. Well, I don't want it quite as technical as that.

A. May I say one-third interest in our estate?

Q. That would be the general statement?

A. A third interest in our estate.

Q. Well, is that the fact? A. Yes.

(Testimony of Mrs. Charles W. Mapes.)

Q. That you and Charles Mapes and Gloria each had a one-third interest in your husband's estate?

A. Yes.

Q. And that was the status of your property interests at the time you executed this power of attorney on November 10, 1943?

Mr. Cooke: She didn't execute it, did she?

Q. Or your son or daughter executed it?

A. Yes.

Mr. Platt: Thank you for the correction. If the [488] Court please, I offer a certified copy of this recorded power of attorney in evidence.

Mr. Cooke: The offer is objected to, if the Court please, on the ground it is irrelevant and immaterial to any issue in the case. It simply purports to be a power of attorney from Charles Whitcraft Mapes, Jr., and Gloria Mapes, to Mrs. Charles W. Mapes of the same place, as attorney in fact, giving her broad power to collect and receive all sums of money, etc., that may be due to them on the property in this county. There is nothing to show that at this time the property in question here, namely the lot on which the hotel is constructed, is a part of the property covered by the power of attorney. That the lot, as a matter of fact, was in the name of Mrs. Mapes for some considerable time subsequent to the death of her husband and it was later deeded over and is now, by the allegations in the answer in this case, two-third interest in it to Charles and Gloria. We contend that the power of attorney would be incompetent for any purpose of notice, if that is

(Testimony of Mrs. Charles W. Mapes.)

Q. Mrs. Mapes, you and your son, Charles W. Mapes, and Gloria Mapes organized a co-partnership, didn't you? [491] A. Yes.

Q. Do you recall about when that was organized? A. It was in 1943.

Q. In '43? A. Yes.

Q. Was that co-partnership organized in writing by articles or agreement of co-partnership?

A. Yes, it was registered in Carson. Registered as—it isn't a corporation, but it is registered as a name.

Q. It is a co-partnership?

A. It is a co-partnership.

Q. And that co-partnership was doing business under the name of Charles W. Mapes Company of Reno, Nevada? A. Yes.

Mr. Platt: May I ask counsel if he has a copy of the Articles of Co-partnership?

Mr. Cooke: I think so. I may not have them with me though. They are probably in the general file in the office.

Mr. Platt: Well, that was an unexpected request, your Honor.

Mr. Cooke: I think they are in another file. I can get them for you this afternoon, Mr. Platt.

Mr. Platt: Yes, if you will produce it later.

Q. I call your attention, Mrs. Mapes, to a certified copy of deed purported to have been executed by you to the co-partnership. [492] I hand you a

(Testimony of Mrs. Charles W. Mapes.)

certified copy of it. Do you recall having executed that deed? A. Yes, I did.

Mr. Platt: We offer it in evidence.

Mr. Cooke: The offer is objected to, if the Court please, on the ground it is irrelevant and immaterial to any issue in this case; that it is merely a deed of conveyance by Gladys Irene Mapes to herself and to her son, Charles W. Mapes, and Gloria Mapes as persons doing business under the name of Charles W. Mapes Company and it is made in the usual form of a grant, bargain and sale deed to the second parties as joint tenants with the rights of survivorship, and that includes the lot upon which the hotel building is constructed. Then it recites the consideration received, etc. The point of our objection is that it has no materiality in the case and none as stated by counsel as to what he can prove in this case here presented to your Honor, whether or not the written document constitutes such a document as you can decree specific performance. As to whether it constitutes a right to make a contract, that is a matter for future consideration, but that paper is signed by the parties, it is admitted by the pleadings and cannot offer by the witness any question about that, and the question then is here whether or not it is such a paper as specific performance can be decreed on it. It was made November 6, 1945, about two weeks or more after the September [493] 24, 1945, agreement was made, but in what way that would aid your Honor in determining the sufficiency of the September 24, 1945,

(Testimony of Mrs. Charles W. Mapes.)

document to decree specific performance, is something I can't understand and that is why I am objecting.

The Court: This offer is on cross-examination and let me ask this question to see if I can get an understanding of this branch of the case. Suppose this property described in the exhibit "C," the contract, was not owned by Mrs. Mapes or by Charles Mapes, wouldn't that be a point in determining whether or not specific performance should be decreed? You certainly wouldn't expect the Court to decree specific performance or damages or any relief if the parties to this contract did not have ownership or control of the ground. Doesn't this go to that point, or does it?

Mr. Platt: No, if your Honor will permit me. It has been admitted by the pleadings that at the time of execution of this agreement Mrs. Mapes was seized in fee of that property, that is admitted. Now subsequent to that time the execution of the contract—they set up a so-called affirmative defense, whereby for some purpose or other, I don't know whether the purpose was to defeat the contract or not, but they set up that one-third interest in that property was conveyed to the [494] daughter, Gloria Mapes, and that she had no knowledge of the agreement. Of course, if she had knowledge of the agreement, she would undoubtedly be bound. That is a matter of proof, but we expect to prove that the affirmative defense set up, namely that one-third interest in this property was deeded to Gloria, is not

(Testimony of Mrs. Charles W. Mapes.)

in accordance with the record facts; that this one-third interest was conveyed to a co-partnership, of which Gloria, her brother, Charles Mapes, and Mrs. Mapes were a party and that all members of the co-partnership are deemed to have knowledge of the acts of the co-partnership and the act of one binds all. Now it is in definite contradiction of that allegation in the affirmative matter set up in the answer, and that is the purpose of introducing it.

The Court: Objection will be overruled. The exhibit may be admitted as Plaintiff's Exhibit "N."

Mr. Platt: I won't stop to read it all to your Honor, I just want to read the conveying portion.

(Reads from Exhibit "N".)

Q. Going back for a moment to the certified copies of the two powers of attorney that have been introduced and admitted in evidence here, may I ask you, Mrs. Mapes, that at the time those two powers of attorney were delivered to you did you, at that time, have any interest with your son and daughter in the properties referred to in the power of attorney giving you full and complete power of attorney and right to act and for in [495] their place and stead? Do you understand that question?

A. Yes. I had an interest.

Q. Then I may ask whether you understand that they were powers of attorney coupled with an interest? If you don't understand the legal significance, you did understand that you had an interest with them in the property?

A. Yes.

(Testimony of Mrs. Charles W. Mapes.)

Q. Referred to generally in the powers of attorney? A. Yes.

Q. And neither one of those powers of attorney have ever been revoked? A. No.

Q. They are still in full force and effect?

A. Yes.

Q. Mrs. Mapes, of course you are acquainted with Mr. Moorehead, who was called as a witness here? A. Yes.

Q. And he has been acting for you as construction builder for your hotel?

A. Yes, construction builder.

Q. And is still acting in that capacity?

A. Yes.

Q. Do you recall when you first met him?

A. Some time in '44.

Q. Prior to that time had you a conversation with Mr. Denson, [496] the plaintiff, concerning Mr. Moorehead? A. No.

Q. Did Mr. Moorehead tell you that he had talked to Mr. Denson? A. When?

Q. Before he came to see you? A. No.

Q. He didn't? A. No.

Q. Where did you meet him in 1944?

A. In my home.

Q. Do you remember about what month it was?

A. It was in the summer. I couldn't tell you exactly.

Q. Was he alone when he visited you?

A. Yes.

(Testimony of Mrs. Charles W. Mapes.)

Q. Was Mr. Denson's name mentioned in the conversation?

A. I think he said that he had heard from somebody in Los Angeles about my building a hotel here and that Mr. Denson had told him about who I was and my name in that conversation.

Q. And did you tell him that you knew Mr. Denson?

A. Yes. I don't know as I told him. I think it was mentioned. I said I knew him.

Q. And what was the purpose of his visit? What did he say to you?

Mr. Cooke: Objected to as irrelevant and immaterial [497] what he said.

The Court: Objection overruled. You may answer the question.

A. He came to tell me about his credentials, that he was associated with building of large hotels, the Skeens Hotel, and was starting back in business again and very anxious to sell himself to me as far as being able to erect a building, to give us satisfaction.

Q. Did you at any time after that discuss his qualifications with Mr. Denson? A. No.

Q. Well, you made an effort to find out about his qualifications?

A. No, I am sorry I didn't.

Q. You didn't?

A. No. I might say that I was impressed with Mr. Moorehead. He seemed to be very nice and understanding.

(Testimony of Mrs. Charles W. Mapes.)

Q. Did Mr. Denson at any time, in conversation with you before you met Mr. Moorehead, mention Mr. Moorehead to you?

A. Not that I recall, Mr. Platt.

Q. Well, are you positive that he didn't?

Mr. Cooke: I renew my objection, your Honor.

The Court: Objection overruled.

A. I don't recall, Mr. Platt.

Q. He may have done so but you don't recall?

A. No, I don't.

Q. When, if at all, did you see Mr. Moorehead again?

A. He had called me and he wrote me. He seemed to keep after me quite a little after that first visit. I don't know as I paid very much attention to his visits or calls.

Q. You didn't pay much attention?

A. No, I don't believe I became interested in Mr. Moorehead until 1945. He had been to see me and called me and sent me letters.

Q. How did you become interested in him in 1945?

Mr. Cooke: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Q. How many times, do you recall, Mrs. Mapes, that you met Mr. Denson before he signed the agreement on October 4, 1945?

Mr. Cooke: Same objection. Preliminary negotiations merged in the written agreement.

(Testimony of Mrs. Charles W. Mapes.)

The Court: Objection overruled. Answer the question.

A. I couldn't tell you just exactly how many times.

Q. Well, quite a number of times, wasn't it?

A. No, I think that would be several times. I couldn't exactly tell you.

Q. Well, it was several times, wasn't it?

A. Oh, two or three. I wouldn't know really. I haven't it in my mind.

Q. Prior to the signing of the contract did you entertain Mr. [499] Denson at your home?

A. Yes.

Q. Upon many occasions?

A. No, I wouldn't say many. I think possibly two or three times. I don't know whether that was prior or after. It might have been once or twice before.

Q. And upon those occasions prior were Charles and Gloria Present? A. Yes.

Q. As a matter of fact, he was a house guest at your home, wasn't he, at times before he signed the contract?

A. Once before or twice before—twice before.

Q. You were on very friendly terms with him, weren't you? A. Why, of course.

Q. And then after he came up here on October 4th and signed the agreement, when did you see him again?

A. Well, I wouldn't know just exactly. Right

(Testimony of Mrs. Charles W. Mapes.)
after that. I think it was in November or the latter part of October.

Q. Of 1945? A. '45.

Q. And where did you meet him then?

A. Here in Reno.

Q. At what place?

A. Well, it would be my home.

Q. You are not certain whether it was October or November? [500]

A. No, not definite, no.

Q. And who was present with Mr. Denson at your home when you met him either in October or November of '45?

A. Why my daughter Gloria, I guess that's about all. I don't know whether Charles was there or not.

Q. Was he a house guest upon that occasion?

A. Yes, he was.

Q. Stayed at your home over the week-end?

A. Well, he stayed twice at my home.

Q. And you entertained him?

A. Yes, always.

Q. And I suppose he in turn entertained you to some extent?

A. I wouldn't say. No, I don't think he did, Mr. Platt.

Q. But you entertained him on these occasions?

A. Yes.

Q. On that occasion in October or November do you think he was here two or three days?

A. Yes, I would say he was.

(Testimony of Mrs. Charles W. Mapes.)

Q. Did you talk about the hotel building upon which he had this contract?

Mr. Cooke: Objected to as irrelevant and immaterial.

The Court: Objection overruled. You may answer the question, Mrs. Mapes. Do you understand the question?

A. Yes, that I had talked to him about the hotel. Yes, we [501] were considering signing, to start the construction of the hotel at that time.

Q. Well, what did you discuss with him at that time?

A. I think I asked him any time when he did come could we get together on an agreement as far as association, so that we could get together on the lease. That was right after October 4th. I don't think Mr. Denson came back until—it was the latter part of October or November that he came back and at that time I asked him if we couldn't get together on an agreement for the association, that we could draw up a lease. Mr. Denson, I recall, was there in my home at the time. He wasn't well. He was having trouble with his denture, his mouth was giving him quite a little bit of trouble, but just the exact date I couldn't tell you at all, and he left. He was sort of a sick man, I would say, having this difficulty with his denture and mouth bothering him. He couldn't eat, was having difficulty and he was going down to see a doctor.

Q. But you don't recall whether that conversation was in October or November? A. No.

(Testimony of Mrs. Charles W. Mapes.)

Q. Might it have been in December?

A. No, it would be earlier than that. It was in October or November.

Q. When did you see Mr. Denson again?

A. I talked to him on the telephone later in November when we [502] had actually started work on the building over there.

Q. You talked to him on the telephone?

A. On the telephone.

Q. Where was he and where were you when you talked?

A. He was in Visalia. I was in my home.

Q. And what part of November was that?

A. The latter part.

Q. Did he call you upon that occasion or did you call him? A. I called him.

Q. What did you call him about? What did you say?

A. Well, he had been informed that actual construction of the job had started, the superintendent was on the job and actual construction had started, such as building the protection to the public, etc., like that, and I called him and asked him if he could come up so we could get together on this agreement so that we could draw up a lease.

Q. What did he say?

A. Well, he was busy at that time, selling his hotel, and he said he would come.

Q. Selling his hotel? A. Yes.

Q. Did you know that he sold his hotel?

A. Yes.

(Testimony of Mrs. Charles W. Mapes.)

Q. Did he tell you why?

A. Well, when he first came to see me, the very first time, [503] he told me he was contemplating selling the hotel. This was a seller's market and he wanted to sell his lease.

Q. Didn't he tell you he was selling his hotel because he wanted to devote all his time to your hotel?

A. No.

Q. You say he didn't say that?

A. No. He wanted to get rid of the lease he had on the Johnson Hotel, I believe it was, in Visalia; this was a seller's market and he wanted to get out of there and then all of a sudden he wrote me a letter—he told me he had somebody interested in buying the hotel and that was in, I would say, November.

Q. When did you see him again?

A. Not until January of 1946.

Q. Where did you see him at that time?

A. Here in Reno.

Q. At what place?

A. At my home. He was here for three days, I believe.

Q. Was he a guest at your home? A. No.

Q. How many times did you see him during those three days?

A. Well, the two days he was here, I saw him for two days and—I want to say for two days I saw him.

Q. And you entertained him as usual at your home?

(Testimony of Mrs. Charles W. Mapes.)

A. Well, I think we were quite busy right at that time. I [504] don't know as we entertained him, might have had him for dinner. I might say I am quite hospitable, Mr. Platt, so far as entertaining and I might have asked him to dinner.

Q. I know that. At any rate, your relations with him at that time were very cordial, weren't they?

A. Yes. And I told him at this visit that we had started the building, the permit had been taken out, and asked him couldn't we get together with an agreement so that we could draw up a lease and he told me he had to leave to go to his home in Visalia and he would come back. He was right here when I got the permit and the building was actually started and he promised to come back.

Q. And you say that was in January, 1946?

A. That was in January, yes.

Q. Were you present in Mr. Cooke's office when Mr. Denson signed the agreement?

A. What agreement, this 24th of September?

Q. Yes. A. Yes.

Q. When he signed it on October 4th?

A. Yes.

Q. Didn't Mr. Denson say that he would tell you and Mr. Cooke that he would sign a lease any time it was prepared? A. No.

Q. You state he didn't make such a statement?

A. No, Mr. Platt.

Q. Now you saw him the last time early in January, '46, I mean the last time you testified about?

(Testimony of Mrs. Charles W. Mapes.)

A. I saw him around the 25th of January.

Q. The 25th?

A. 24th, 25th and 26th of January, yes.

Q. When did you see him again?

A. I didn't see him again until April 10th.

Q. And where did you see him then?

A. In my home.

Q. Did you meet Mr. Denson in San Francisco at any time? A. Yes.

Q. And what were those occasions?

A. I met Mr. Denson, as I recall, twice in San Francisco. The first time was—well, I met him V-J night and the day after V-J.

Q. What date was that?

A. I would say that was August 14th and 15th. I am not definite on that date, but I will never forget the day, V-J Day.

Q. Where did you meet him on that occasion?

A. You mean the very first time?

Q. Well, the first time?

A. I met him that evening in the lobby at the hotel. I think he came to our room later, I know he did.

Q. How did you happen to meet him on that occasion, on V-J [506] Day?

A. Mr. Moorehead had been to look over these plans he had drawn up and he wanted to come to Reno and I told him we had business in San Francisco and to save him a trip we would go to San Francisco and he arranged this meeting and I believe that was the day after V-J Day.

(Testimony of Mrs. Charles W. Mapes.)

Q. Didn't he arrange the meeting with Mr. Denson?

A. Mr. Denson would be there.

Q. And he told you Mr. Denson would be there?

A. Yes.

Q. And Mr. Denson was there?

A. Mr. Denson and Mr. Denson's wife, I believe, were there on a vacation.

Q. And at what hotel did you meet?

A. That was the Sir Francis Drake.

Q. What part of the hotel did you meet?

A. It was up on the Mezzanine floor. What meeting is this? Am I getting ahead of myself?

Q. V-J Day.

A. No, we arrived in Oakland just as V-J Day was declared. We came over to the hotel and were greeted with a bucket of water from the window. The whole town was in excitement, and I met Mr. Denson in the lobby that evening and later he joined us in our room. My son was there and Mrs. Denson. That was the first time I had ever met Mrs. Denson, and my [507] daughter Gloria.

Q. Well, did Mr. Denson participate in the discussion about the plans, if there was any?

A. Well, I don't recall that he did, anything special.

Q. Did you? A. Yes.

Q. What did you say about the plans?

A. Well, I remember remarking the plans weren't to my expectations. They weren't what I planned or thought of.

(Testimony of Mrs. Charles W. Mapes.)

Q. Did Mr. Denson make any suggestion about the plans?

A. I don't recall any definite. I think we all talked and chatted, but I don't know as he gave anything definite.

Q. Well, he may have made some but you don't remember?

A. No, I wouldn't say at that time. I think they were showing me plans, Mr. Platt.

Q. And you saw him again in San Francisco, didn't you?

A. Yes, I would say about two weeks later.

Q. Where did you meet then?

A. In the Fielding Hotel.

Q. And did you meet by appointment?

A. Yes, there was an appointment.

Q. Who arranged the appointment?

A. Well, that was with Mr. Moorehead.

Q. Was it understood that Mr. Denson——

A. (Interrupting): It was a continued meeting from that first [508] meeting.

Q. Did you understand that Mr. Denson would be present?

A. Mr. Denson said that he would be there.

Q. Who participated in that conference?

A. Well, Mr. Denson, Mr. Slocum, Mr. Moorehead, my son Charles and myself.

Q. And that occurred at the Fielding Hotel?

A. At the Fielding Hotel.

Q. How long were you in conference?

A. Well, we met in the forenoon, had lunch and

(Testimony of Mrs. Charles W. Mapes.)

came back later in the afternoon and talked a little bit.

Q. Were any plans exhibited at that time?

A. They were corrected plans from that first visit at the Sir Francis Drake by Mr. Moorehead.

Q. Were any suggestions given, plans, made by Mr. Denson?

Mr. Cooke: We wish at this time to renew our objection, your Honor, for fear it will be forgotten; that this evidence is irrelevant and immaterial, has nothing to do with things done and said prior to the recital of the document in question.

The Court: Objection overruled.

A. Not that I recall, Mr. Platt.

Q. Do you recall any suggestions Mr. Denson made concerning plans of the hotel?

A. Not definite. [509]

Q. Definitely or indefinitely, have you any recollection? A. No, I don't recall.

Q. Do you recall he made a suggestion about enlarging the rooms? A. No.

Q. Do you recall that he ever made a suggestion about enlarging the size of the sky room?

A. No.

Q. Cutting out the indenture and making it straight across? A. No.

Q. Do you recall any suggestions he made with respect to enlarging the closets in the hotel?

A. Coming directly from Mr. Denson?

Q. I am asking you whether you recall any suggestions?

(Testimony of Mrs. Charles W. Mapes.)

A. No, he didn't make any suggestions.

Q. Do you recall whether he made any suggestions with respect to the third elevator in the hotel?

A. No.

Q. Do you recall a single suggestion he made?

A. No, it doesn't stand out in my mind, a single suggestion.

Q. Not a single suggestion?

A. Not a single suggestion. May I say at this time——

Q. (Interrupting): There were many changes, weren't there, made in the plan?

A. Well, the idea of the hotel is purely my own, the thought [510] of the sky room and side walls continued, is my own. I corrected Mr. Moorehead many times on the plans he presented, and how the rooms became larger, Mr. Moorehead gave me the plans of the hotel, single rooms, giving these windows on the outside. I said, "Mr. Moorehead, this would never do. These have to be double windows." At that time it was suggested the rooms be enlarged. I had called his attention from the very start my thought was large rooms and as large closet space as we could have and he couldn't give me large rooms on account of the way he spaced the windows and I didn't know about that until after he presented the outside view of the hotel and this was a single window and I said, "We can't have this, it has to be a double window." He said well at that he could enlarge the rooms and that is how it was the rooms became enlarged.

(Testimony of Mrs. Charles W. Mapes.)

Q. But you are definite in your statement that no suggestion ever came from Mr. Denson as to change in plans of the hotel?

A. I am definite in that.

Q. And if Mr. Moorehead, your construction engineer, gave such testimony he was in error?

A. I don't know about that.

Mr. Cooke: Objected to. This witness——

The Court (Interrupting): Objection sustained. It may be stricken if already answered. [511]

Q. Did Mr. Moorehead ever tell you that Mr. Denson suggested changes?

A. I had heard Mr. Moorehead and Mr. Slo-cum——,

Q. Can't you answer that question?

A. I don't recall that he did tell me about anything definitely being changed, no.

Q. Do you mean by that answer that he did not or he might have and you have forgotten about it? Which is your answer?

A. I don't recall that he ever gave me any definite change that Mr. Denson had made. I might have mentioned a change and they might have taken it up as their change, but it was my original idea. I hired Mr. Denson and Mr. Moorehead as competent people to correct any changes that were not right in my ideas and we argued back and forth. I was very definite what I wanted in that hotel.

Q. You say you hired Mr. Denson and Mr. Moorehead?

(Testimony of Mrs. Charles W. Mapes.)

A. I am sorry. May I excuse that. I mean Mr. Moorehead.

Q. I am repeating the question.

A. I mean the engineer and architect. They were hired to assist me in putting correctly my ideas into that building. I am paying for the building and building the building.

Q. As a matter of fact, Mrs. Mapes, isn't it a fact that you relied in many instances on Mr. Denson's advice and counsel and his long experience with hotels?

A. No. [512]

Q. You didn't rely on him at all?

A. No.

Q. Why, may I ask, did you want Mr. Denson present at all these conferences you held with the builder and architect?

Mr. Cooke: That is objected to. I don't know if there is any testimony she said she wanted him.

The Court: Objection overruled.

(Question read.)

A. I don't know that I wanted him present. I think he was just there present. I think he was welcome and knew what was going on, but I don't think he was sent for specially to be there.

Q. Mrs. Mapes, didn't you testify a while ago that it was your desire to have Mr. Denson present and that is why you had him meet you and Mr. Moorehead and Mr. Slocum in San Francisco?

A. It was understood—I didn't testify I wanted him there. It was understood he would be present.

(Testimony of Mrs. Charles W. Mapes.)

If I testified like that, I would like to correct it at this time.

Q. Did you understand he was going to be present?
A. Yes.

Q. What led you to that understanding?

A. Mr. Moorehead.

Q. What did Mr. Moorehead tell you?

Mr. Cooke: Objected to as irrelevant and immaterial. [513] There must be some limit to this.

The Court: Objection overruled.

A. Mr. Moorehead told—Mr. Moorehead had called me and said he had plans ready and would like to bring them up to see how I would approve them and I told him it wouldn't be necessary for him to bring them to me, that I had business I had to do in San Francisco and it was Mr. Moorehead that arranged with Mr. Denson to be there. I didn't arrange with Mr. Denson to be there. I understood he was going to be there.

Q. You understood he was going to be there?

A. Through Mr. Moorehead. I didn't request his being there.

Q. What did Mr. Moorehead tell you that you had that understanding that Mr. Denson would be there?

Mr. Cooke: We renew the objection.

The Court: Objection overruled.

A. Well, Mr. Moorehead and Mr. Denson had kept after me ever since I had known either one of them about this hotel. They were together in a lot of conversations that I wouldn't know anything about.

(Testimony of Mrs. Charles W. Mapes.)

Q. But Mr. Denson was actually present on these occasions in San Francisco with your approval? A. Yes.

Q. And he entered into the conversation?

A. Yes.

Q. And he entered into the discussion as to ways and means of [514] constructing the hotel and changes and plans? A. No, no.

Q. He didn't?

A. No, those were my ideas and Mr. Moorehead's and Mr. Slocum's.

Q. Do you mean to say that Mr. Denson didn't discuss at all with you or with Mr. Moorehead and with Mr. Slocum at these two conferences that you held in San Francisco, do you mean to say that he didn't enter into the discussion?

A. He might, yes, in some trivial way that doesn't stand out in my mind, but I wouldn't recall that.

Q. In some trivial way?

A. Something that wouldn't stand out. I was there for Mr. Moorehead to try to sell me his plans to see if he would be the one responsible for erecting the building. I was there to be pleased, not Mr. Denson.

Q. As I understand it, Mr. Denson's discussion was so limited in scope and so trivial that it didn't impress you at all?

A. It didn't impress me.

Q. And that was true, was it, upon every con-

(Testimony of Mrs. Charles W. Mapes.)
ference you had with him in the presence of Mr. Moorehead and Mr. Slocum?

A. As far as I can recall, yes.

Q. And were his discussions with you in Reno just as trivial?

A. I think I told him what had been going on, but I don't think he informed me of any changes. I know he didn't. [515]

Q. In other words, he had very little to say about the hotel?

A. About the construction of the hotel. I was constructing it.

Q. And that is your testimony with respect to all interviews about the hotel in which you and he participated? A. Yes.

The Court: We will be in recess until tomorrow morning at 10:00 o'clock.

(Recess taken at 4:50 p.m.) [516]

Wednesday, December 11, 1946

10:00 A.M.

Appearances same as at previous sessions.

Mr. Platt: If the Court please, pursuant to our request yesterday, Mr. Cooke has just furnished me with a copy of the co-partnership agreement entered into between Mrs. Charles W. Mapes, Charles W. Mapes, Jr., and Gloria M. Mapes on November 9, 1943, and while this is a copy, I don't suppose Mr. Cooke will make a point of that, but I offer it in evidence as the original co-partnership agreement.

Mr. Cooke: No, I won't make any point of that; I told you it was a copy, but I wish to add an objection.

The Court: Do you desire to make your objection now, Mr. Cooke?

Mr. Cooke: Yes. The objection is that it is immaterial, incompetent, and irrelevant for the purpose that it is presumably offered, namely, to show notice to Gloria Mapes of the unrecorded Denson agreement of September 24, 1945, the point of the objection being this, your Honor, that it would not impute notice to Gloria Mapes, she being a purchaser on the face of the deed for one-third interest in this particular property. It wouldn't include notice to her because of the fact that Mrs. Mapes, who did, of course, have notice of it and who was the grantor, her knowledge wouldn't impute to the purchaser for a valuable consideration, even though they may be partners. This was not a partnership transaction, this [517] was not a part of the partnership business, carrying forward the joint partnership affairs, but it was a purchase by two of the partners of certain property from the third partner, for the purpose of making it a joint ownership proposition. Now the authorities, as I find them on that point, are generally to this effect, that if it might be presumed that the grantor, knowing the existence, would inform the grantee of any outstanding unrecorded equities, such as we have here, that would be imputed where partnership relation existed and transaction is between one partner and another part-

ner, but unless your Honor can find or thought, according to the legal relations existing between the parties at the time, Mrs. Mapes would have necessarily have informed the grantees that, "Here is an outstanding agreement I have here with a man named Denson and it involves a contemplated lease for 20 years and if this thing goes through there will be a lease on this property for 20 years' time, so I want you to know this when you buy this property and pay the money for it," if that were the situation, your Honor, then that notice to the grantor under the circumstances would be notice to the grantee, but there is nothing of that kind here, I submit. The matter of whether this constituted an encumbrance upon the interest might deter the deal being made. If you just forget for a moment the relationship of the parties, mother and daughter and son, and take the case of Smith and Brown and Thompson and Smith has a [518] proposition to sell to his other two partners, we will say, a certain piece of property. They are to buy a two-thirds interest in it and if Smith, the grantor, knows that John Brown or Pete Denson or somebody has a claim on that property that might possibly be enforced and if enforced it might perhaps bear upon the value of the property, so Mr. Smith doesn't tell the other party anything about it. It is not of record and they buy that without any notice at all. There, of course, it could not be claimed there would be any imputed knowledge, even though the relationship exists. Because the grantor had the notice is no rea-

son that the grantor, under those circumstances, would not be supposed to be under any duty to tell the grantees that there was this outstanding lien. That is the basis of my objection.

Mr. Platt: I repeat, if the Court please, what I stated yesterday. Of course Mrs. Mapes testified, if I understand her testimony correctly, the children had an equal interest with her in the estate of her deceased husband. That being so, it must be construed that they all had an equal interest in the real estate that is involved in this litigation and this co-partnership which was entered into in 1943 is quite a sweeping co-partnership. It provides that the parties hereto have agreed, and by these presents do agree, to associate themselves as co-partners for the purpose of carrying on the business of buying, selling, conveying, leasing and generally [519] operating real estate in Reno, Washoe County, Nevada, and to do and transact such other business that might appertain thereto that the parties shall decide to engage upon; that the name and style of such co-partnership shall be Chas. W. Mapes Company and shall continue until dissolved or terminated according to law; the parties hereto have each furnished in cash, or its equivalent, an undivided one-third of the value of the entire property belonging to the co-partners; that at all times during the continuation of said co-partnership each of the parties will give their best interest * * * and each will bear, pay and discharge equally between them all expenses required for the support and management

of said business, and so on. Certainly under such a co-partnership agreement, involving the ownership and possession and right of possession of real estate and real estate involved in this transaction, if one of those partners enters into an agreement for leasing of any part or portion of that real estate or the disposition of it, certainly it binds the remaining parties and notice is imputed to them with respect to the transaction. It would likewise be if either one of the parties had entered into an agreement for the leasing of any part or portion of the property as a part of the partnership business. Certainly it is fundamental that one partner entering into a contract like that binds the others.

Mr. Cooke: If the Court please, one thing I think [520] counsel overlooked and that is that the deed from Mrs. Mapes to Gloria and Charles of this particular property was not made until November 6th of 1945. The partnership agreement had to do with the property that belonged at that time, but the partnership did not own the property at that time. It was owned by Mrs. Mapes individually down to November 6, 1945, or two years thereafter. I think Mrs. Mapes did make sort of a general statement on the stand yesterday that the property of the estate was divided, but this was not property of the estate. This particular lot never did go into the estate and counsel put in a deed from Mrs. Mapes individually to Gloria and Charles, dated in November, which would show that that property

belonged to her. The estate had nothing to do with that, until November 6, 1945, so it is not an action, as counsel seemed to assume, of one partner going out after the partnership was formed and entering into a contract and agreement. I would freely grant if after November 6, 1945, Mrs. Mapes had gone out and made a deal with Mr. Denson or anybody else personally, being a partner, that would be binding on the partnership. But she was the sole owner when this transaction was made on September 24, 1945, and hence I say before Gloria can be held under this alleged unrecorded instrument which existed between Mrs. Mapes and Mr. Denson, they have to show that she had constructive notice or imputed notice, which is the same thing. They have not offered to show any [521] evidence that she had actual knowledge of it. Now they seek to show that she has imputed knowledge by reason of the grantor, Mrs. Mapes' knowledge and what I say is well founded in law, that notice of a grantor, under those circumstances, even though a partner, would not be notice to the grantee.

The Court: Your objection might go more to the weight than the question of admissibility of the particular instrument now offered. The objection will be overruled and the partnership agreement may be admitted in evidence as Plaintiff's Exhibit "O."

Mr. Platt: I have read most of it into the record and I will let it stand that way, your Honor.

MRS. MAPES

resumed the witness stand.

Further Examination

By Mr. Platt:

Q. Mrs. Mapes, on yesterday I understood you to testify that the only time you signed an agreement bearing date 24th of September, 1945, was on October 4, 1945, when Mr. Denson appeared here in Mr. Cooke's office, is that true? A. Yes.

Q. In order to refresh your recollection about that, I call your attention to what purports to be an agreement entered into this 24th day of September, 1945, upon the stationery of H. R. Cooke, attorney, phone 6333, which purportedly bears [522] your signature alone and witnessed purportedly by B. C. Yparraguire and H. R. Cooke. Now didn't you sign that agreement personally in Mr. Cooke's office on the 24th of September, 1945?

Mr. Cooke: Objected to as irrelevant and immaterial.

Q. Wasn't it understood that Mr. Cooke was to send that signed agreement by you to Mr. Denson at the Biltmore Hotel, Los Angeles, California?

Mr. Cooke: Objected to as compound. You are asking two questions in one.

The Court: Objection will be overruled.

Mr. Cooke: May I add to that objection?

The Court: Certainly. Ruling is withdrawn.

Mr. Cooke: The objection that I heretofore made, that this in the event is a document that is

(Testimony of Mrs. Irene Gladys Mapes.)

purportedly held to be signed by Mrs. Mapes alone, it is irrelevant as to document admittedly signed by all parties, to wit, September 24, 1945, and whatever papers may have been signed or partially signed or partially executed or what not would be part of the rule not being the best evidence and being part of the negotiations they are deemed to be merged in the agreement that was finally signed up by all the parties.

The Court: Objection will be overruled.

(Question read.)

A. Mr. Platt, is this the same that we initialed?

Q. No.

A. The copy I signed was the same as I have in my pocketbook here.

Q. Let me ask you, Mrs. Mapes, is that your signature on this agreement? A. Yes.

Q. Do you know Mr. Cooke's signature?

A. Yes.

Q. Is that his signature? A. Yes.

Q. Do you know Miss Yparraguire's signature? She is Mr. Cooke's secretary. A. Yes.

Q. Is that her signature? A. Yes.

Q. You identify all those signatures?

A. Yes.

Mr. Platt: We offer it in evidence, your Honor.

Mr. Cooke: We object to the document being admitted in evidence on all the grounds stated in the last objection to the question, and the further ground that there is no foundation for showing that

(Testimony of Mrs. Irene Gladys Mapes.)

it was ever delivered to anybody, where it came from, whether it was picked up on the street or how it was obtained or whether it was passed to the plaintiff in this case, whether it even constitutes or referred to the [524] dictum of preliminary negotiations. The paper apparently bears signature of Mrs. Mapes, but does not bear signature of the other parties. It bears the signature of the witness, that is true, but I submit it is immaterial, irrelevant, does not constitute legal evidence for any purpose at all.

The Court: So far I do not believe there has been any showing that this particular offer, this exhibit now offered, came to the notice of the plaintiff.

Mr. Platt: That is right, your Honor.

The Court: So you might just mark it for identification at this time.

Mr. Platt: But in that connection we desire to prove, and offer to prove, that that document which I have offered in evidence was enclosed in an envelope in Mr. Cooke's office and sent by Mr. Cooke on September 24th to Mr. P. G. Denson, care of Biltmore Hotel, Los Angeles, California. The envelope bears the receiving date or receiving postmark, the envelope bears the inscription, "H. R. Cooke, Attorney and Counsellor at Law, First National Bank, Reno, Nevada." We offer to prove that, but if Mr. Cooke continues to stand upon his professional privilege, we can't prove it except through Mr. Denson and he has already testified that he received it.

The Court: Well at the time Mr. Denson was on

(Testimony of Mrs. Irene Gladys Mapes.)

the stand was this particular document called to his attention?

Mr. Platt: No, your Honor, it wasn't called to his attention except generally.

The Court: The Court will permit you to offer proof by Mr. Denson or otherwise of the fact that this particular document did or did not come to his attention and received by him, so at the present time the objection to the introduction of the instrument will be sustained.

Mr. Platt: May we offer the exhibit for identification?

The Court: It will be marked for identification as Plaintiff's Exhibit "P".

Mr. Platt: In order that the record may be now straight, may I offer in addition to it the envelope?

The Court: That will be offered as part of the same exhibit, marked as the same exhibit, Exhibit "P" for identification.

Q. Mrs. Mapes, did you at any time discuss the question of a loan with Mr. Denson, for the purpose of borrowing money to aid in the construction of the hotel?

A. No, that is outright. I might have discussed that I was getting a loan.

Q. That you were what? [526]

A. That I was contemplating getting a loan. I don't recall that, but not in the sense Mr. Denson has said here in court, that he helped me to get it.

Q. Well, did you have any conversation with Mr. Denson at any time or at any place, wherein you

(Testimony of Mrs. Irene Gladys Mapes.)

expressed the desire to get a loan and asked his assistance in obtaining one?

A. No, I asked Mr. Moorehead——

Mr. Cooke: (Interrupting) The question can be answered yes or no I think.

A. No.

Q. Well, did you send any representative or agent or embassy to Mr. Denson with a request that he communicate your desire that Mr. Denson assist you in obtaining such a loan.

A. No, I did not.

Q. Did you ever discuss the question of a loan with Mr. Denson in company with Mr. Moorehead?

A. I believe I did. I told Mr. Moorehead I was going to Sacramento to see Mr. Wright and asked whether or not if he would go along and explain the construction of the building and he said he would gladly do it and Mr. Moorehead and I went to Sacramento to the California State Life Insurance Company, Mr. Wright, and we discussed the loan and Mr. Wright said—he had been in my home, I knew Mr. Wright—and he said he was interested in the loan but their company was limited to the amount of money they could loan and that they would have to call in the Occidental Life.

Q. Was Mr. Denson present in Sacramento?

A. No, he wasn't present in Sacramento. No, this was just between Mr. Moorehead and myself. I don't know whether he heard any conversation at the time or not, but this was directed to Mr. Moorehead.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. But did Mr. Denson later meet with you and Mr. Moorehead?

A. No, I understood through Mr. Moorehead——

Q. (Interrupting) Just a minute. I want to get the question finished.

A. I am sorry.

Q. Did Mr. Denson meet with you and Mr. Moorehead at any time in Sacramento or in San Francisco for a discussion of the loan?

Mr. Cooke: Objected to on the ground that this is not a preliminary negotiation, that it is not part of any contract that your Honor is authorized to decree specific performances, being nothing in the written document with reference to any loan transaction or that Mr. Denson should have anything to do with it; that under the amendment to the complaint, whereas it is originally alleged he secured a loan, it was changed to the allegation that he attempted to secure a loan or assisting in securing a loan. Your Honor will recall the amendment to the amended complaint. The whole matter of whether he undertook to attempt to help her get a loan, to our mind at least, with due respect to those that differ from us, is fugitive and utterly beyond the jurisdiction of the court. It is not a part [528] of contract. It is not a part of any written document. Under law there has to be a writing and has to be certain and definite in all essential material provisions and that he attempted to get a loan does not have anything to do with this any more than if he attempted to cross a bridge. It is so far removed

(Testimony of Mrs. Irene Gladys Mapes.)

—we are absolutely serious in our stand—but we are going far afield by taking in all these matters of oral talk and attempts to do this, that and the other as constituting any part of the contract or having anything to do with the contract or having any sort of connection, even remotest, with the contract that your Honor is called upon to determine whether it can specifically be enforced or not.

The Court: Objection overruled. You may answer the question.

A. I don't recall that he ever did, no.

Q. Isn't a fact, Mrs. Mapes, that you know, of your own knowledge, that Mr. Denson contacted a Mr. Gock, who was vice-president of the Bank of America, in an effort to obtain the loan for you?

Mr. Cooke: I wish to interpose the same objection, your Honor, and more specifically the objection that this admittedly occurred, if it occurred at all, prior to the signing of the document which is the basis of plaintiff's case and that the evidence can not control or neutralize or change or effect the meaning of that document. That it isn't claimed that [529] the document is uncertain upon its face, that it is ambiguous in the sense it requires oral testimony of preliminary negotiations to explain it. It is claimed it was executed by everybody, so it must be allowed to speak for itself, without regard to what was said or done prior to that.

The Court: Objection overruled. Answer the question.

(Testimony of Mrs. Irene Gladys Mapes.)

A. I can't recall that he talked to me about Mr. Gock in regard to the loan.

Q. Did Mr. Denson talk to you about Mr. Gock about anything?

A. Yes.

Q. About what?

A. About helping me secure the 12-foot strip.

Q. When did that conversation take place?

Mr. Cooke: Same objection I have made all through.

The Court: It may apply to all this class and character of testimony and same ruling will also apply.

A. As far as I can recall, I believe it was in December.

Q. December? A. Yes.

The Court: What year was that?

A. That would be '45.

Q. Do you remember what time in December this conversation took place?

A. I am really sorry, I couldn't know. I think there is a definite way for me to find out though if [530] that is necessary.

Q. Where did it take place?

A. Mr. Denson——

Q. (Interrupting) Can't you answer that question?

A. Where did it take place?

Q. Yes.

A. What are you talking about now?

(Testimony of Mrs. Irene Gladys Mapes.)

Q. The conversation I understood you had with Mr. Denson concerning the 12-foot strip, during which conversation Mr. Gock's name was mentioned. Where did that conversation take place?

A. I think that conversation came before the signing of that agreement in September.

Mr. Cooke: You have already stated that it was in December, you thought, of '45.

A. Well, I think I have Mr. Gock's letter. I think I asked Mr. Denson to see Mr. Gock about this 12-foot strip. I understood there was an objection to it, the bank being adjoining property owners, and that was what was keeping us from being able to purchase that 12-foot strip.

Q. Well, when did you first learn that there was such a man as Mr. Gock in existence?

A. Mr. Denson spoke of Mr. Gock as being one of the heads of the Bank of America.

Q. Did he tell you where he lived? [531]

A. He lived in Los Angeles.

Q. Your testimony is that you wanted the assistance of Mr. Gock, who lives in Los Angeles, isn't a residence of Reno or Nevada, in obtaining or assisting in obtaining the 12-foot additional strip?

A. No, I think Mr. Denson asked me about the 12-foot strip and I told him I was having objections from the bank. I understood the objection had come from the bank. He said, "Would a letter from Mr. Gock help in any way to have Mr. Hopper intercede for the 12-foot strip for you?" I said, I think

(Testimony of Mrs. Irene Gladys Mapes.)

it would go a great way." They are adjoining property owners and objected to that 12-foot strip.

Q. Was Mr. Denson in Reno during the month of December, 1945?

A. No, and I would like at this time to correct what I stated yesterday. It wasn't in December or October and November as stated yesterday. I was mistaken.

Q. Do you know whether Mr. Denson ever interviewed Mr. Hopper of the bank here concerning the 12-foot strip. A. Yes.

Q. When did he do that?

Mr. Cooke: Objected to as irrelevant and immaterial; outside of any possible issues in the case, as part of this proposed loan they say he attempted to get for us. I understand that this evidence, and all along this line, has gone in pursuant to the allegation of the amendment to the amended complaint [532] that he attempted to get a loan for us, but talk to Mr. Hopper and what was said between Mr. Hopper and him about the 12-foot strip, seems to me to be outside the allegations and outside the issues of the case. I add all the other objections I have made.

The Court: What is your purpose of going into this matter of the 12-foot strip?

Mr. Platt: Well, if your Honor please, I desire to show that Mr. Denson, through the suggestions of Mrs. Mapes, did intercede in order to assist her in getting this 12-foot strip, but he interceded through Mr. Hopper and Mr. Gock's name was

(Testimony of Mrs. Irene Gladys Mapes.)

not mentioned in the transaction at all. It is a question as to the credibility of her testimony.

The Court: It bears on the question of negotiations in regard to the loan?

Mr. Platt: Yes.

The Court: Objection overruled. Answer the question.

(Question read.)

A. Mr. Denson didn't interview Mr. Hopper. He went along with me to see Mr. Hopper and that was some time in September. It was before this agreement was signed.

Q. He went along with you to see Mr. Hopper?

A. Yes, he was here in Reno.

Q. Well, you discussed the question of the 12-foot strip at [533] that time?

A. Yes, I went up and discussed the 12-foot strip with Mr. Hopper.

Q. Was there any mention made at that time of Mr. Gock? A. No.

Q. You are certain about that?

A. Mr. Denson might have said he knew Mr. Gock, but he wasn't brought into the conversation. I think Mr. Denson was always informing me he knew Mr. Gock. Mr. Gock and he were very inseparable friends. That was brought out many times during the conversation.

Q. Well, did Mr. Denson ever tell you in any conversation that he had with you why he would repeatedly mention the name of Mr. Gock?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I think he told me one time that he helped Mr. Gock or Mr. Giannini to get stock or something. I didn't get the connection at all that he mentioned.

Q. Isn't it a fact, Mrs. Mapes, when you were discussing the question of a loan that Mr. Denson told you that he had a very influential friend by the name of Mr. Gock, who was a friend of his and was connected with the Bank of America in a high official position and that he thought that if he interceded for a loan on your behalf he would get it? Now didn't Mr. Denson tell you that?

A. No, he didn't tell me that. [534]

Q. As a matter of fact, Mrs. Mapes, didn't Mr. Denson tell you here in Reno that he felt quite certain that through the interposition of Mr. Gock that he would succeed in obtaining a loan for you?

A. No, he did not.

Q. Do you know how Mr. Denson happened to be in Sacramento when you and Mr. Moorehead were there attempting to get the loan?

A. I really don't recall Mr. Denson in Sacramento, I am sorry to tell you that.

Q. He then wasn't there?

A. I don't recall him being there.

Q. It has been suggested, Mrs. Mapes, that I ask you this question. During any of your negotiations leading up to the signing of this agreement in evidence here, did you ever discuss with

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Denson the necessity of your needing money and the necessity of obtaining a loan?

Mr. Cooke: Same objection.

The Court: Same ruling.

A. No, I didn't, Mr. Platt. You can always get money as far as your credit is good and I don't thing I had to look to Mr. Denson to help me get a loan. I think I asked Mr. Moorehead—

Q. (Interrupting) Then your answer is that you never discussed with Mr. Denson the question of financing this hotel building operation? [535]

A. No.

Q. Never once?

A. No. Well, I can't recall never once. I might have spoken after we had gone into the negotiations, I don't recall that, about the loan, but I wasn't looking to Mr. Denson at any time to help me to get a loan. I think our background would get me any amount I would need, our financial statement, and I think it is ridiculous to think that he could get me a loan. I asked Mr. Moorehead to assist me for his being able to tell what the building was that was being constructed and how much it would cost and about how long it would take to construct it, but I think our background would warrant any loan, Mr. Platt, and I would like to put that in very definitely; it wouldn't be Mr. Denson that would have to help me get a loan.

Q. Did I understand you to say that you asked Mr. Moorehead to assist you?

A. To go along and describe the building, to give

(Testimony of Mrs. Irene Gladys Mapes.)

an idea of what we were trying to construct in the building. I knew Mr. Wright and he knew me, a friend of the family. He had been in our home and we got in to Mr. Wright and Mr. Wright got us into the Occidental Life. I don't think I ever needed Mr. Denson at any time to help me get a loan. My financial statement would warrant any loan that I would ask for.

Q. And in order thoroughly to understand your testimony, you [536] said that Mr. Gock's name was never brought into any conversation that you had with Mr. Denson except with reference to the 12-foot strip? A. The 12-foot strip.

Q. I call your attention to Plaintiff's Exhibit "I", which are pages of two local newspapers here in Reno, Nevada, the Nevada State Journal, bearing date December 2, 1945, and the Reno Evening Gazette, bearing date December 3, 1945, under the caption, "Work on New Mapes Hotel Goes Forward", and I will ask you if you know from what source the information in that article was obtained?

Mr. Cooke: Objected to unless the article is offered in evidence.

Mr. Platt: It is in evidence.

The Court: Exhibit "I" I think has been admitted. It is two newspaper articles.

Q. Who gave the newspapers that article, the substance of it?

Mr. Cooke: If you know.

A. I think the son gave it to them.

Q. Your son? A. Yes.

Q. Charles W. Mapes, one of the defendants?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Yes. At the request of Mr. Denson. Mr. Denson kept saying, "Don't you think we should put something in the paper regarding our association?" and then he sent his background and [537] I told him I thought it was too soon, it was premature.

Q. Was it done with your knowledge and consent? A. I knew it was being done, yes.

Q. You offered no objection? A. No.

Q. And you were familiar with the contents of the article before it appeared? A. Yes.

Q. In the article in the Nevada State Journal it is stated: When completed the hotel will be furnished by Mapes and Peter G. Denson, who now owns and operates the Hotel Johnson at Visalia, California. Denson is an engineer by profession and for many years was engaged in building railways, * * * etc.

A. That is the article Mr. Denson sent in.

Q. Well, did you have knowledge that that portion of the article, along with the rest of it, was to appear in the newspapers? A. Yes.

Q. And it was published with your consent?

A. I knew it was being published, yes.

Q. And the Reno Gazette article of December 3, 1945, there appears among other things this statement: "The hotel is being built and will be managed by the firm of Charles W. Mapes, Jr., and Peter G. Denson. Denson has been active in the hotel business for nearly 30 years and owns and operates [538] the Johnson Hotel at Visalia, Cali-

(Testimony of Mrs. Irene Gladys Mapes.)

ifornia, is a member of the Oakland State and Southern California State Associations. He has managed and owned many hotels in California and Oregon. He is an engineer by profession and was a Captain in the First World War. * * *'' You knew about that before it was published?

A. Yes. I thought it was being published too premature, as I explained to you, but Mr. Denson was very anxious to have something in the paper about the hotel being started and that they would be the managers of it and he sent his background as to being an engineer.

Q. Didn't you and your son and Gloria have a desire, as a matter of pride, to have this article published?

A. No.

Mr. Cooke: I object——

The Court: It is already answered.

Mr. Cooke: I can't jump on my feet before the answer is finished.

The Court: It may go out.

Mr. Cooke: I wish to interpose the same objection as made heretofore, that this is irrelevant and immaterial as to the meaning, construction, terms and conditions of the agreement of September 24, 1945. It does not make any difference how many publications were made or what pride or lack of pride they had. It is not a matter, your Honor, that your Honor could pass upon. It is absolutely irrelevant to the [539] question of what this contract calls for and whether it is a contract or not.

The Court: This was after the contract, wasn't

(Testimony of Mrs. Irene Gladys Mapes.)

it, and there is a contention here that the provision of the contract making all the essentials was violated. That is one of the contentions, isn't it?

Mr. Platt: Yes.

The Court: This might have some bearing on that. I am not able to state at this time, so the objection will be overruled.

A. No, I can't think of it as pride. I know at the time I thought it was premature. I think we are very retiring, as far as newspaper notices are concerned.

Q. Did you ever express any desire to Mr. Denson in effect that as soon as work started you wanted some newspaper publicity? A. No.

Q. Never at any time? A. No.

Q. You will note in these two exhibits, the architect's drawing of the Mapes Hotel and illustration.

A. Yes.

Q. Who furnished them?

A. Mr. Moorehead. [540]

Q. To you? A. To my son, I believe.

Q. How did the newspapers get the cuts?

A. When we got them.

Q. From you?

A. Yes, from my son. This was done through the urging of Mr. Denson.

Q. Well, you said that many times, Mrs. Mapes. I am asking you a question now as to how it came that the newspapers got these cuts and you replied through your son? A. Yes.

Q. These articles in the Hotel Journal publica-

(Testimony of Mrs. Irene Gladys Mapes.)

tions which are in the record as Plaintiff's Exhibit "J," were you familiar with the contents of these articles? A. No.

Q. Did you ever see them? A. No.

Q. Did Mr. Denson tell you that they were to appear in these various magazines?

A. He told me he was going to write some articles on his own.

Q. And were they all done with your approval?

A. No.

Q. Did you offer objection to them?

A. No.

Q. Well, you state that they weren't done with your approval, [541] but you offered no objection?

Mr. Cooke: She didn't know anything about it.

A. I didn't know anything about it until after he told me they had been published.

Q. Did you register any objection afterwards?

A. No.

The Court: I thought you testified Mr. Denson told you he was going to publish those articles.

(Previous testimony read.)

Q. I think I asked you this question yesterday, but I am going to ask it again. Did Mr. Denson call you on long distance phone from Visalia, California, on the 25th day of March, 1946?

A. He called me on—he called my son on the 25th of March and I answered the phone. I wouldn't know where he called from.

Q. Do you know how long the conversation continued?

(Testimony of Mrs. Irene Gladys Mapes.)

A. No, I couldn't tell you that.

Q. Well, isn't it a fact that he talked to you personally for about eight minutes?

A. Oh, it was a long conversation.

Q. What did he say and what did you say?

Mr. Cooke: Same objection.

The Court: Same ruling.

A. Well, his call was for Charles and Charles wasn't there and he said he was anxious to have Charles come down to Los [542] Angeles to see an interior decorator and my conversation to him was, "Mr. Denson, when are we going to get together on this lease? This decoration, aren't you getting the cart before the horse, going after these decorations before we are in agreement on the lease?", and we talked and I told him how he had promised to come back after the 25th of January and to get together on the lease and agreement and he said well, the time had expired on that agreement.

Q. He said that?

A. Yes, he said this over the phone. We had a long lengthy conversation and after he had said that, I still asked him to get together on the lease with us and agreement and he said he would call Charles back the next night.

Q. Let me get this straight. Mr. Denson told you over the phone that his contract had expired?

A. That that preliminary agreement had expired.

Q. Had expired? A. Yes.

Q. What else did he say about it?

(Testimony of Mrs. Irene Gladys Mapes.)

A. And I asked him though when we could get together on the agreement and a lease after that.

Q. Notwithstanding, as you testify, he told you that contract or agreement had expired——

A. Yes.

Q. He wanted Charles to come to Los Angeles to arrange for [543] the fixtures and furniture?

A. No, this was before. That was the first part of the conversation, Mr. Platt.

Q. Well, in that conversation——

A. (Interrupting) Yes.

Q. ——Mr. Denson requested that Charles come to Los Angeles?

A. His first part of the conversation was that Charles come——

Q. (Interrupting) In order to arrange for furniture and fixtures?

A. That he had been talking with Miss Mason for the decoration.

Q. What did you tell him about that?

A. I told him wasn't this getting the cart before the horse? "When are we going to get together on our lease and agreement?" He had promised to come back after January 25th and this was the first we had heard from him.

Q. Did you ever offer or tender him a lease?

A. Yes—not as a lease, no. I asked him to get together to draw up a lease.

Q. But you didn't ever offer him a proposed lease? A. No.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Did you ever tell him in effect that if he didn't sign a lease or you couldn't get together on a lease, that you would nullify the agreement?

A. No. [544]

Q. Well, did you tell your son Charles about the desire of Mr. Denson to have him go to California to arrange for fixtures and furnishings?

A. I told my son that Mr. Denson would call him the next night and I told him of my conversation with Mr. Denson on the phone.

Q. Well, did Mr. Denson call him the next night?

A. He called him the next night. I wouldn't say the next night, but a night or so after that. I don't have those dates definite.

Q. And do you know, of your knowledge, whether Charles went to meet him to arrange and participate in that interview with respect to furnishing the hotel?

A. Well, Charles called him the 29th of March; we called him the 29th of March, and we wanted to get together with him on an agreement and a lease.

Q. Charles wanted to get together with Mr. Denson on an agreement and a lease?

A. Yes, I asked him on that occasion would he get together with my son on a lease.

Q. Do I understand you to state now that Charles phoned Mr. Denson and told him that he wanted to get together with him on an agreement and a lease?

A. Yes, I think the call on the 29th, when Charles spoke to him on the 29th, it was stated that he would

(Testimony of Mrs. Irene Gladys Mapes.)

meet him in San Francisco and I asked him at that time could we get together [545] on a lease.

Q. Well, what did Mr. Denson say? Did he refuse to get together on the lease?

A. He said he would.

Q. He said he would? A. Yes.

Q. And that was on——

A. (Interrupting) But he wanted Charles to come to San Francisco.

Q. Those two phone calls between Mr. Denson and you and Mr. Denson and your son, Charles Mapes, occurred on March 25th and March 26th, 1946?

A. And one that we phone Mr. Denson on March 29th.

Q. And you phoned him on March 29th?

A. Yes.

Q. Where was Mr. Denson then?

A. I believe Visalia; I know it was Visalia.

Q. When you say "we," whom do you mean? You both phoned him, you and Charles?

A. We both talked on the phone. Charles called him.

Q. What was said in that conversation?

A. Well, I asked him couldn't we get together. He had admitted on the 25th that the preliminary agreement had run out and I said, "Couldn't we get together on our agreement and lease?" and he said he would. [546]

Q. That was on March 29th?

A. This conversation, that I talked to him.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. In other words, according to your testimony, he was ready and willing to sign a lease and get together on the lease on that day?

A. Well, really, I don't know how he did answer me on that. I asked him to get together. I don't recall really what his answer was. I asked him would he get together with me on the lease and agreement.

Q. Well, according to your testimony, Mrs. Mapes, you were ready and willing to get together with him on a lease on the 29th of March?

A. Yes.

Q. And notified him to that effect?

A. Yes; after he had told me that this preliminary agreement had run out.

Q. You are very certain he told you that?

A. Yes, and I was very certain I kept after him to have him get together on the lease and agreement.

Q. Well, of course, you know of your own knowledge that Charles went to California and met with Mr. Denson? A. Yes.

Q. And Miss Mason and Mr. Moorehead and Mr. Slocum?

A. From what they told me, yes.

Q. And Charles told you all about that? [547]

A. Yes.

Q. When he came back?

A. Well, he called me from San Francisco.

Q. He called you from San Francisco?

A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. When did he call you? A. April 1st.

Q. 1946? A. Yes.

Q. Well, did Mr. Denson come to Reno shortly after that?

A. He came April 10th to Reno.

Q. And when and where did you see him in Reno? A. In my home.

Q. Was that on April 10th?

A. On April 10th.

Q. And what did you tell him and what did he tell you or what was the conversation between the two of you?

A. Well, Mr. Denson said that I had agreed to build him a hotel and after agreeing to build him a hotel I begged him to take my son Charles in as an associate. On my begging, he took Charles in to be an associate without looking into Charles' background or ability. Now he says "Charles refuses to enter into a lease with me on this hotel," and he said "I have a binding agreement with you and I propose to have this enforced." He said, "If Charles doesn't want to enter [548] into a lease with me, I am ready and willing to accept the lease by myself."

Q. Then according to that, Mrs. Mapes, he evidenced the utmost willingness to enter into a lease?

Mr. Cooke: Objected to as argumentative.

The Court: Well, that might be. Objection sustained.

Q. Well, was it a fact that Charles wouldn't sign a lease?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Charles told me from San Francisco that he wouldn't enter into a lease with Mr. Denson.

Q. Charles told you?

A. Yes, he called me on the telephone from San Francisco.

Q. And what day and date was that?

A. April 1st.

Q. And did Charles tell you that he told Mr. Denson that?

A. He called me and he said, "Mother, I am not going to enter into a lease with Mr. Denson. No one can make me enter into a lease with Mr. Denson." I said, "Charles, what are you saying?" and he repeated it and I said, "Now, don't get excited, just stop and think it over" and I said, "Couldn't you get Mr. Denson and we all get together?" and I believe that was the reason Mr. Denson came to Reno April 10th.

Q. Well, when Mr. Denson came to your home what was said?

A. By whom?

Q. Well, I will withdraw that question for the moment. When he came to your home who were present? [549]

A. When I was there?

Q. Yes.

A. My son Charles, my brother, William S. Hall, and Mr. Denson and myself.

Q. What was the conversation, what was said.

A. What conversation are you speaking about?

Q. That you and Mr. Denson and your son had at your home in the presence of these other people?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I just told you the conversation I had with Mr. Denson in my home.

Q. Well, I am sorry, Mrs. Mapes.

A. Mr. Denson came to the home early and he and Charles were together. I came a little late. I might explain that. I had a meeting where I was responsible for some monies, a board meeting, and I went—it was at 10 o'clock—and I asked if I could give my report and leave quickly and they permitted me to do so and I came home.

Q. Of course, you don't know anything about the conversation when you were not there?

A. No, not when I wasn't there.

Q. What I am trying to find out, what was the conversation with you and Mr. Denson present?

A. The only conversation with Mr. Denson is what I just told you.

Q. Will you repeat that? [550]

A. Mr. Denson said that I agreed to build him a hotel and after agreeing to build the hotel that I had begged him to consider my son, Charles, as an associate with him. that through my begging he considered Charles without looking into his background or ability and that Charles had refused now to enter into a lease with him and that he had a binding contract with me and he proposed to enforce it.

Q. Well, what did you say in response to that statement?

A. Well, I told my feelings. I was rather mad.

Q. You were mad?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I was rather shocked when he said I begged him to take my son Charles in as an associate and I think the mother in me rose up and I said, "Mr. Denson, I don't have to prove to anybody that I am a real mother." I said, "My life is my children." I said, "If God were to come into this living room this very minute and ask which one he should take first, I would say, 'Please, God, take me and spare my children'." Then I said, "It is all very evident now, Mr. Denson, why we have never been able to get together on a lease and agreement. This clears it all up."

Q. Well, let me ask, Mrs. Mapes, upon that occasion did Mr. Denson tell you that he would go through with the contract, or words in substance to that effect?

A. He told me that Charles wouldn't go through with the contract, refused to go through with the contract. [551]

Q. Well, did Mr. Denson tell you that he would refuse to go through with the contract or would refuse to take a lease from you to himself and Charles as lessee?

A. He said he was willing, if Charles wouldn't go through with the contract to take it himself.

Q. Oh, he said if Charles wouldn't go through with the contract he would take the lease in his own name?

A. He was willing and able to.

Q. But he never offered any objection to taking Charles in as a partner, lessee?

A. No.

Q. Well, after this part of the conversation, was there anything else said?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Well, I think after Mr. Denson talked and after I had talked to Mr. Denson, he became very red in the face and he asked Charles how about fixing us a drink. We had a drink and then they left the house.

Q. Do you remember what day of the week that was?

A. That was April 10th.

Q. Where did Charles and Mr. Denson go, if you remember?

A. Well, they were going down town.

Q. Well, did they have an appointment with Mr. Cooke?

A. Not that I would know of.

Q. Well, didn't you suggest that they do down and see Mr. Cooke? [552]

A. No.

Q. You don't know whether they saw Mr. Cooke or not?

A. I recall that Charles had an appointment down town and he took Mr. Denson with him. I don't know what——

Q. (Interrupting) Did Charles later report that they went to Mr. Cooke's office?

A. Yes.

Q. What did Charles tell you?

A. Well, he went to Mr. Cooke's office to tell Mr. Cooke that he wasn't ready to go through with this lease.

Q. Well, can you remember what Charles told you said and what happened in Mr. Cooke's office?

A. I think Charles told Mr. Cooke why he wasn't ready to go ahead with this lease with Mr. Denson.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Well, did he give any reason? A. Yes.

Q. What did he say?

A. That Mr. Denson had ignored him, that he didn't consider him at all in the agreement, that he was going to be the manager and Charles was to go to college and he disregarded every claim as to the amount that each one was supposed to have in the hotel. It was a 30-70 proposition and he said this is a 50-50 proposition and it was then that Charles refused to associate with him.

Q. Has Mr. Denson ever refused to comply with the agreement [553] as it is written and as it is in evidence here.

A. Charles refused to comply.

Q. Charles refused to comply?

A. Refused to associate with him.

Q. As it is written? A. Yes.

Q. Are you ready and willing now to go through with the agreement as it is written?

Mr. Cooke: Objected to as immaterial. It is not a question of the status now. The question is what it was at the time the action was commenced.

The Court: Objection overruled.

Witness: I would have to have the advice of counsel before I answered that question.

Mr. Cooke: Tell him no.

A. No.

Mr. Sinai: I never heard that in a courtroom before.

The Court: That may go out, stricken from the

(Testimony of Mrs. Irene Gladys Mapes.)

record. The question he has propounded to the witness, what is your answer?

A. No.

(Short recess.)

Mrs. Mapes resumed the witness stand.

Mr. Platt: You may cross-examine. [554]

Cross-Examination

By Mr. Cooke:

Q. You testified on your examination by plaintiff's counsel a moment ago of some meeting in December with Mr. Denson, do you remember about that? Did you have any meeting with him in December of 1945? A. In person?

Q. Yes. A. No.

Q. Let me ask it this way. After the September 24, 1945, document was signed, when was the very first time after that—that was signed, you said, on October 4th? A. Yes.

Q. When was the very first time after October 4th that you saw Mr. Denson next?

A. January 25th.

Q. You mentioned that date, did you, in fixing that particular date, or do you mean that is the approximate date?

A. He was here for three days on that date, the 24th, 25th and 26th and I have that date in my mind because it is the date that we filed the permit for construction of the building. We had the plans and specifications ready at that time.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Was that one of the occasions when he was a guest at the house? A. No.

Q. How many times did you meet him? What I am trying to get [555] at, Mrs. Mapes, about what was the length of your conversations or meetings with him, discussions with him, during those three days he was here in January, 1946?

A. I recall one meeting with him where I had asked him if we could get together on drawing up the lease.

Q. What I am asking though, Mrs. Mapes, is about how much of these three days did you see of him, that is to say, how many meetings did you have with him? I mean in regard to the hotel business.

A. There were two days there.

Q. Well, you don't mean that you and he talked for a full two days? A. Oh no.

Q. About how many minutes or hours altogether did you and he discuss your hotel business?

A. Well, I think we went over what was going on, as far as the construction was concerned, the building.

Q. What was said at that time by either you or Mr. Denson in regard to the construction and the stage of it and the progress of it? As near as you can recall.

A. The building had actually started.

Q. I am asking you to state what was said, if you can recall it, or as nearly as you can recall it. What was said by you to Mr. Denson or him to you about the construction?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I think I told him that it had definitely started and we [556] had the plans and specifications and I asked him if we couldn't get together on the lease.

Q. What, if anything, was said in regard to permit from the city authorities for the building, or the greater portion of it at that time?

A. We were taking out the permit for the building.

Q. Was that about the time that the permit was actually obtained? A. Yes.

Q. What did Mr. Denson say about the permit or about the matter of your getting together on the lease?

A. He said he had to leave town at that time and he would come right back.

Q. Did he say where he was going or why he had to leave?

A. Yes, he had to go home to wind up some business he had in Visalia.

Q. How long was he in Reno after you had told him you would like to get together with him on the lease?

A. That was after I asked him could we get together on the lease he told me he would have to leave.

Q. How soon after that did he leave? Do you remember him staying around here or did he leave right away?

A. No, he left right after that.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Did you have any plans or specifications in the house or before you at the time you were having your talk with Mr. [557] Denson? A. Yes.

Q. Did you show him the permit?

A. I think he saw that down in the office.

Q. What office do you refer to?

A. The construction office.

Q. That is the hotel? A. Yes.

Q. Do you think that from anything he told you, or why do you think it?

A. We were there discussing that actual construction had started and that permit was taken out or being taken out.

Q. This was on January 25th or 26th?

A. 25th or 26th, yes.

Q. How long before January 25th did you have the permit?

A. It was taken out around that time.

Q. Well, you had it when you were talking with Mr. Denson?

A. I didn't have it, no, it was being taken out.

Q. Well, I mean the company had it?

A. I think it was being taken out.

Q. Mr. Moorehead was looking after it more than you? A. More than I was.

Q. He was manager of the construction part of the Mapes enterprise, is that right?

A. Yes, of the construction. [558]

Q. What, if anything, can you tell me was the stage of the actual construction work? What were

(Testimony of Mrs. Irene Gladys Mapes.)

they working on at the time Mr. Denson was here?
What work was being done at that time?

A. Excavation for the basement.

Q. The excavation had been started some considerable time before that, hadn't it, Mrs. Mapes?

A. Well, what would you call it—the demolition, the preliminary part was being started.

Q. You have referred a number of times in your testimony, in answer to Mr. Platt's question, that you wanted to get together with Mr. Denson on the lease and agreement. What agreement are you referring to?

A. The agreement between him and my son Charles.

Q. You were interested in that were you?

A. Very much so. They were to get together on an agreement for the association.

Q. For the operation of the hotel?

A. For the operation of the hotel.

Q. You are naturally interested in it being an amicable, friendly, workable relation?

A. Yes.

Q. Was it contemplated, so far as you know, that there was to be any written agreement between him and Mr. Denson for the partnership or the like?

A. Yes.

Q. Why do you say yes?

A. Because it was supposed to be a written agreement. They were to get together to have this agreement drawn up on the basis of how they were to associate.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. You say "supposed" but did you ever hear Mr. Denson say anything about it or Mr. Mapes in the presence of Mr. Denson?

A. Yes, Mr. Denson promised to do that right after he signed that paper.

Q. Promised to do what?

A. To get together on this association agreement.

Q. On the agreement with your son?

A. Yes.

Q. For the operation of the hotel?

A. Yes.

Q. Were the terms of that discussed between you and Mr. Denson or between you and your son in your presence?

A. Yes, that was discussed before we signed this agreement.

Q. You signed this agreement, then in your reliance on that arrangement going through?

A. Yes.

Q. And the terms were discussed, as far as you can recall, as to this agreement between your son and Mr. Denson?

Mr. Platt: If the Court please, in order to preserve the record, not indicating at all that I am making an objection [560] to keep anything out of the record, but I do want to interpose this objection to this type and character of testimony, because there is nothing in the pleadings by way of allegation in the complaint or amended complaint, or by way of answer or denial or affirmative de-

(Testimony of Mrs. Irene Gladys Mapes.)

fense that sets up such a defense that there was an understanding or a side agreement, that this main agreement was contingent or dependent at all upon any understanding existing between Charles Mapes and Mr. Denson. It is entirely foreign to the issues.

Mr. Cooke: I do not see how counsel can say it is foreign to the issues when on his own examination he brought out repeatedly from Mrs. Mapes there were these references to an agreement and lease. Now I am trying to find out what this agreement is she is talking about. I think it is proper, in view of his cross-examination or direct examination, whatever you might call it.

The Court: I don't see how it affects the situation here. Objection will be sustained—not being a matter of any defense or affirmative matter in the answer. Objection will be sustained.

Mr. Cooke: It is true we have not pleaded it—it is under the notion that we had a right to go into subjects opened up on plaintiff's examination.

The Court: Just what was opened up, what portion or subject matter discussed on plaintiff's examination would [561] open up this inquiry?

Mr. Cooke: When she refers to the agreement, refers that she wanted to see him about the agreement, wanted to see him about the lease. I want to find out what the agreement was, what that transaction was.

The Court: Does it go to bearing on the question

(Testimony of Mrs. Irene Gladys Mapes.)

as to whether or not Mr. Denson was ready, willing and able at all times to receive or execute a lease?

Mr. Cooke: No.

The Court: Objection sustained.

Mr. Cooke: We note our objection.

Q. You stated in your direct examination, Mrs. Mapes, that in one of the conversations that you had with Mr. Denson out at the house the matter of the division of the profits or hotel operations between your son and he were discussed, do you remember that? A. Yes.

Q. What conversation was that?

A. That was a conversation on their getting together to agree to the agreement of the association.

Mr. Platt: I did not object, if the Court please, I did not think counsel would persist in the fact of your Honor's ruling, but I ask that the answer be stricken.

The Court: It may go out for the purpose of making [562] any objection that you might desire to make to the question.

Mr. Platt: Upon the same ground as the previous objection, your Honor.

(Question read.)

The Court: That was brought out and allowed to go in without any objection on the part of the defendant. Objection to that question will be overruled.

Mr. Platt: Well, of course, I submit your Honor,

(Testimony of Mrs. Irene Gladys Mapes.)

it was a volunteered statement, although I didn't move to strike it, but we defer to your Honor's ruling.

The Court: You may answer the question.

Q. What conversation was it, Mrs. Mapes, at which this talk of division occurred?

A. Why, Mr. Denson was to get 30 per cent—

Q. What conversation was it, what time? Identify the talk and where it was had, if you can.

A. It was in my home, Sunday evening.

Q. With reference to date September 24th?

A. Saturday evening.

Q. September 24, 1945, was it before or after that date? A. Before.

Q. How long before?

A. Before September 24, 1945? [563]

Q. Yes, how long before?

A. A day or two before.

Q. It was a part of the discussion then that led up to the drafting of that September 24th instrument? A. Yes.

Q. Just what did Mr. Denson say about that subject, about division? What was said about that?

A. It was agreed at that time—

Q. (Interrupting) No, don't say what was agreed. Tell us what was said and who said it, if you can, as nearly as you can remember.

A. Well, Mr. Denson said he wanted to be a partner of Charles in any way and would take 30% as Charles suggested and Charles could have the 70%.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. That would be of the profits?

A. Of the hotel, the association.

Q. What had Charles said previously about that?

A. Well, that was Charles' ruling, that he would only go in with Mr. Denson——

Q. (Interrupting) No, tell us what he said to arrive at the conclusion. What did Charles say in regard to it, what he wanted by way of division at that time?

A. He wanted 70% of the hotel.

Q. Thirty per cent to go to Mr. Denson?

A. And 30 per cent to go to Mr. Denson. [564]

Q. That is what he said? A. Yes.

Q. And Mr. Denson made the reply you have already testified to? A. Yes.

Q. Did you ever hear anything further in regard to that division being satisfactory or unsatisfactory, so far as Mr. Denson was concerned?

Mr. Platt: Objected to upon the ground of being a conclusion.

The Court: I think the objection will be overruled. You may answer the question.

A. What do you mean?

(Question read.)

A. Not until my son had told me of his visit with Mr. Denson in San Francisco.

Q. That was on or about April 1st?

A. April 1st.

Q. That is 1946? A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. And what was it that your son told you about Mr. Denson's reaction to that on that occasion?

A. That he denied it was a 30-70 proposition and he was going to hold out for 50-50.

Q. Who was going to do that? [565]

A. Mr. Denson.

Q. The result of the April 1st meeting in San Francisco was that finally in the sense that it came to a break in the thing, or was it contemplated that negotiations would be continued? Can you tell me about that?

Mr. Platt: I submit, if the Court please, that it seems to me conversations should be narrated to the Court and the Court and the Court reach the conclusion.

The Court: I think that objection is well taken. Sustained.

Q. Your son reported to you shortly after, or on this day, April 1st, 1946, of the disagreement he had with Mr. Denson about the division?

A. Yes.

Q. Were there any other complaints that your son made about Mr. Denson, or did he mention any other situation?

A. Yes, he said that Mr. Denson had just ignored him throughout, treated him as a child.

Mr. Platt: We ask that be stricken upon the ground it is hearsay.

Mr. Cooke: They went into it on cross-examination. I think that opens the door.

The Court: There are many matters admitted

(Testimony of Mrs. Irene Gladys Mapes.)

on cross-examination without any objection as to what took place between Mr. Charles Mapes and Mrs. [568] Mapes. Now wouldn't that have been subject to the same objection as this present objection?

Mr. Platt: Of course, they were co-defendants, your Honor, but here they are trying to bring out a conversation that was had between Mr. Denson and Mr. Charles Mapes and they are trying to bring it out by a statement which Mr. Charles Mapes made to Mrs. Mapes out of the presence of Mr. Denson.

The Court: Objection sustained.

Mr. Cooke: We except on the ground that the matter is brought up by examination of plaintiff's counsel by asking for report of statements made by Charles Mapes to Mrs. Mapes in connection with the very telephone communications I am now asking about.

(Noon recess.)

Afternoon Session, December 11, 1946

2:00 P.M.

Mrs. Mapes resumed the witness stand on further examination by Mr. Cooke.

Q. Mrs. Mapes, you were asked on examination by plaintiff's counsel, about a meeting in September of 1944 with Mr. Denson. Do you remember about that? A. September, '44?

Q. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

A. Mr. Denson came to our home? [567]

Q. Yes. In regard to the time, is September the time or not? What I want, are you fixing that as a time of that conversation?

A. I recall it was in September of 1944.

Q. I think you said that there were Charles and yourself and Mr. Denson at the house at the time?

A. Yes.

Q. Was that the first time that the matter of Charles being interested in the operation of the hotel was discussed with Mr. Denson?

A. No. What do you mean, Mr. Cooke?

Q. I mean the first time you mentioned it to Mr. Denson? A. No.

Q. When did you first mention to Mr. Denson that it was contemplated Charles was to be interested in the hotel?

A. When he came to see me in the spring of '44.

Q. In the spring? A. Yes.

Q. What time in the spring about was that?

A. Well, I couldn't definitely say. It was in the spring. I couldn't say what month definitely.

Q. Where was that talk had?

A. In my home.

Q. Who were present?

A. I was there and Gloria was there. I don't think she was there while we were talking. She was at home. [568]

Q. Where was Charles at that time?

A. Charles was in service.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. He wasn't there on leave or anything of that sort? He wasn't there at the house? A. No.

Q. Was there anything said at that time in regard to Charles being interested in the operation of the hotel?

A. I said as soon as Charles returned we had planned to build a hotel.

Q. What did Mr. Denson say?

A. Mr. Denson said, "I see you haven't done anything with your property", and I said, no, I was waiting for my son to return from service, at which time we planned to build a hotel.

Q. What, if anything, was said directly upon the matter of your son being interested in the operation of the hotel, if you remember?

A. Well, it was carrying out my husband's plans. He had planned that this property was supposed to be for my son and that my daughter was supposed to get some interest, that is the financial end of it, that Charles would reap the benefit of the development of it. We had enough property of our own. This was sort of a new thought.

Q. But I am asking, Mrs. Mapes, if that was discussed with Mr. Denson?

A. I think I just told him in the conversation.

Q. You mean you told him what you related now? A. Yes.

Q. Do you remember what he said about it?

A. I don't know as he said anything at that time. He said he was always desirous of getting

(Testimony of Mrs. Irene Gladys Mapes.)

into Reno, that he had tried once before to get into Reno and wasn't successful.

Q. Was there anything said at that time in regard to Mr. Denson becoming interested in the hotel in any way? A. No.

Q. When was that particular subject first mentioned between you and Mr. Denson?

A. I think when he came back the second time in September.

Q. In September in 1944?

A. Yes, in 1944.

Q. This meeting you just told us about was in the spring? A. In the spring of '44?

Q. And your best recollection then is that the first time Mr. Denson was contemplated as being interested in the hotel was in September, 1944?

A. Yes.

Q. Do you remember just what was said about that particular subject?

A. He said he was awfully interested in our project, he would take any little bit and part of it.

Q. Well, what did you say? [570]

A. I said that would be up to my son. I didn't give it any thought, left that to my son to decide, to Charles.

Q. Did Mr. Denson express any desire to see Charles or talk the matter over with him?

A. This was after he had met Charles in September at the home.

Q. He met him in September, 1944, is that right? A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. When did he first meet Charles, so far as you know?

A. That was the first meeting.

Q. Oh, at that same meeting? A. Yes.

Q. Was that substantially all that was said in regard to the hotel and the hotel operation, the association of Charles with Mr. Denson, etc.?

A. I just can't recall. I think Mr. Denson many times remarked how anxious he was to be any small part in the hotel, but I just don't recall.

Q. My question was limited to this meeting, as to whether you related all that you recall that was said upon that subject at that meeting?

A. Yes, as far as I can recall.

Q. Now the next meeting was in 1945, I think you told us, August, 1945, is that right?

A. Yes. Oh, I don't know. He might have come once or twice after that. I said the next I recall was 1945. [571]

Q. The next meeting you recall where anything was said in regard to hotel business was in August, 1945, is that right? A. Yes.

Q. That was about a month or more prior to the signing of the September 24th document?

A. Yes.

Q. Where did that meeting take place?

A. At the Sir Francis Drake.

Q. In San Francisco?

A. In San Francisco.

Q. And who besides yourself and he were present, if anyone?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Mr. Slocum and Mr. Moorehead, my daughter Gloria, Mrs. Denson, Mr. Denson and myself.

Q. What was the occasion of that meeting, as far you know?

A. Well, I had made arrangements with Mr. Moorehead to go and look over plans he had there submitted to me.

Q. Plans for the hotel building? A. Yes.

Q. Was that the principal purpose, as you understood it, of that meeting?

A. The only principal purpose?

Q. No, the principal purpose, or did you have some other business down there at that time?

A. No, we had business in San Francisco at that time.

Q. You had other business? [572]

A. Yes.

Q. You didn't go down especially for this?

A. Well, Mr. Moorehead called me and asked me if he couldn't come to Reno and I told him we had this business appointment and it would be easy for me to go down and keep the appointment down there. I would save him a trip.

Q. Where was the meeting in August, 1945? You told us the Sir Francis Drake?

A. The Sir Francis Drake.

Q. Did you tell us who were present?

A. Yes.

Q. Yourself and Gloria—

A. Do you want me to repeat it?

Q. I wish you would, yes.

(Testimony of Mrs. Irene Gladys Mapes.)

A. Mr. Moorehead, Mr. Slocum, Mrs. Denson, Mr. Denson, Gloria and myself.

Q. Had you had any communication, by telephone or otherwise, with Mr. Denson about this meeting shortly previous to that date?

A. I don't recall that I did.

Q. Anyway he was there?

A. He was there.

Q. How long a time did that meeting take?

A. Well, we met—that took up the forenoon of that day.

Q. Was other business discussed during that forenoon? [593]

A. Plans were discussed.

Q. Plans for the hotel? Mr. Moorehead had some there, did he, presented for consideration?

A. Yes.

Q. Were there any changes made in those plans or changes suggested by anybody at that meeting?

A. Yes.

Q. Who suggested the change?

A. Well, I made several suggestions.

Q. Did anybody else make any suggestions?

A. I don't recall right now that they did, Mr. Cooke.

Q. What suggested changes did you make?

A. Well, the entrance of the hotel, the lounge, the coffee shop, and then the dining room was on an elevation.

Q. There were changes that you suggested from those as exhibited on the plans?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Yes, quite a few changes.

Q. And were the changes made at that time, do you know?

A. Mr. Moorehead said he would at a latter date have these changes made.

Q. I mean were any notes made on the plans at that time?

A. Yes, Mr. Slocum was there and made them.

Q. Do you recall any other changes that you suggested besides those you just mentioned?

A. No, I don't recall just at this time. [574]

Q. You said that this business was transacted in the forenoon of that day. How about the afternoon? Did you have any further meeting in the afternoon?

A. Yes, we had lunch and then we went to see some apartments.

Q. What was the purpose of that?

A. During the conversation, may I say, in the forenoon I said to Mr. Moorehead I wasn't quite convinced in my own mind how these apartments should be laid out. I truly couldn't definitely decide and I wondered if I could see some that I might get a little idea from.

Q. Apartments in San Francisco?

A. Yes, anywhere. I don't know as I meant it just then, but I was anxious at any time to see apartments that I might get a little idea from.

Q. Then in the afternoon did you do something about that? A. Yes.

Q. What did you do? Who went with you?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Mr. Moorehead, Mr. Denson, Mrs. Denson, Gloria and I.

Q. How many different places did you visit?

A. As I recall, three or four.

Q. And was that practically all the afternoon taken up in that way?

A. Well, a good part of it, yes.

Q. Did you have any further discussion as to plans for the hotel building? [575]

A. I said to Mr. Moorehead after trip, "Well, this doesn't give us a very good idea, but would you give it a lot of thought and express yourself and I shall give it a lot of thought in the meantime."

Q. Was that said in the presence of Mr. Denson, do you recall?

A. Yes, before all of us.

Q. You were all there together?

A. Yes.

Q. Now then what did you do after making this round of inspection in the afternoon of that day. Did you come back to Reno?

A. No.

Q. Did you have any further meeting with Mr. Denson at that time?

A. Not that I recall.

Q. So there was just one day at this Sir Francis Drake meeting which you have detailed here already and that is the business you transacted.

A. On business, yes.

Q. When did you come back to Reno after that?

(Testimony of Mrs. Irene Gladys Mapes.)

A. About two days later. That day was a holiday, V-J Day.

Q. That would be August 14th?

A. Well, was V-J Day the 14th? If it were, then it was the 15th that we had this meeting and went around and looked at the apartments. [576]

Q. Now the next meeting after this one in August of 1945 was that the following September 23rd or 24th?

A. It was about two weeks later.

Q. That would be about September 1st, wouldn't it?

A. Well, I don't know. The latter part of August or the first of September, I couldn't definitely say.

Q. Where was that meeting held the latter part of August or the first of September?

A. Fielding Hotel in San Francisco.

Q. Who were in the party on that occasion?

A. Mr. Moorehead, Mr. Slocum, Mr. Denson, Charles and I.

Q. Where did you first meet, down there in San Francisco I mean? Where did your party get together and meet, at the Fielding or some other place?

A. This day you are speaking of?

Q. Yes.

A. At the Fielding.

Q. You met at the Fielding?

A. At the Fielding Hotel. We were stopping there.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. What was the occasion? How did that party get together and what was the purpose of it, so far as you know?

A. We were to see the corrected plans that Mr. Moorehead had brought, made from the suggestions at the first meeting.

Q. You mean the corrections that were suggested at the meeting in August? [577]

A. Yes.

Q. August 14th or 15th?

A. Yes.

Q. And the meeting at the Fielding was to consider the corrections that had been put upon the plans or prints by Mr. Moorehead?

A. Well, in a way that and you know to go further ahead on the plans, yes.

Q. I see. In other words, more or less the entire subject was to be considered?

A. Yes.

Q. What time did this meeting take place in the forenoon or afternoon?

A. In the afternoon.

Q. How long a time was consumed in the consideration of these plans, etc.?

A. Well, I think we met up until noon and then we had lunch and we met after lunch.

Q. How long after luncheon, how much of the afternoon was taken up?

A. As far as I recall a couple of hours.

Q. And that all took place in the Fielding Hotel there with the exception of the time spent at lunch?

A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. And all the party you named, they stayed together? [578]

A. Yes.

Q. So far as the hotel is concerned, was there anything else discussed beside the plans?

A. May I correct that? I don't know. At some of these meetings Mr. Slocum left to get busy on the plans. Now whether he stayed or not, I couldn't be sure of that, definite.

Q. Was there anything else discussed at this Fielding Hotel meeting besides the plans and corrections, etc., that you already referred to?

A. Not that I recall.

Q. Were any further changes suggested by you at the Fielding Hotel meeting by you or anybody else?

A. I don't recall any.

Q. You saw the plans with the corrections made and they were approved by you or not?

A. No.

Q. No what?

A. No, they were not approved. We were looking at the plans to continue to have more plans made. I don't know as they were approved at that time.

Q. Well, as far as they went were they approved as temporary plans, I will put it that way?

A. No, I must admit I was just looking at plans at that time. I hadn't definitely decided on the plans.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Maybe we don't understand each other, Mrs. Mapes, but at that meeting, I understand you said Mr. Moorehead was there with plans of the hotel building, which incorporated the changes that you suggested at the previous meeting several weeks before?

A. Yes.

Q. And they were corrected and as far as they went, for temporary purposes, were they satisfactory to you?

A. Yes, for temporary purposes.

Q. Those plans had to be added to and changed from time to time and that was continued down to date, as far as that is concerned, hasn't it?

A. Yes.

Q. I think I asked you this question, but to be sure I would like to ask it again. Did anybody suggest any changes to the plans as Mr. Moorehead presented them at the Fielding Hotel meeting?

A. Now that I can't recall. If any changes were suggested I don't know they stood out enough to impress me. Now I can't recall.

Q. Now the next meeting after this one in the Fielding Hotel, when was that and where was it, Mrs. Mapes? I mean where plans of the hotel were considered?

A. The next meeting was September 24th.

Q. 1945? [580]

A. Yes. May I say 22nd, as far as I can recall, 23rd and 24th, as far as I can recall those dates.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. What, so far as you know, was the purpose and object of that meeting?

A. That was the meeting for Mr. Denson to get together with Charles on the association agreement; discuss the association agreement.

Q. You say "association agreement", what do you refer to?

A. Well, would you say partnership?

Q. Well, agreement, whatever it might be called, between him and Mr. Denson, is that what you mean?

A. Between him and Mr. Denson.

Q. For the operation of the hotel?

A. For the operation of the hotel.

Q. Did the matter of whether or not a lease was to be granted by you to Mr. Denson and Mr. Mapes, was that contemplated to be taken up at this meeting in September?

A. No.

Q. Prior to the meeting itself that wasn't the contemplation, is that it?

A. No.

Q. Just a matter of this other agreement between your son and Mr. Denson?

A. Yes.

Q. Well at the meeting then the matter of the lease did come up, didn't it? [581]

A. Yes.

Q. How did it come up?

A. Mr. Denson brought out this paper that he had in triplicate and he asked me to sign it. He

(Testimony of Mrs. Irene Gladys Mapes.)
said, "It is a preliminary paper." It don't mean anything, but would show that he might eventually be part of it.

Q. You said "this paper."

A. Well, it was the paper I believe that you have here as an exhibit.

Q. I will show you paper marked Defendant's Exhibit 1 for identification and ask you to state if you can whether the typewritten part, without the lead pencil notation of the other sheet attached, is the paper you say Mr. Denson presented to you?

A. Yes, I would say that was the paper.

Q. Do you know anything about the lead pencil notations as they appear upon the exhibit?

A. Yes, I do.

Q. What do you know about them?

A. Well, those were pencilled by you.

Q. When?

A. As near as I can recall it was a Monday, September 24th.

Q. That would be what date with reference to the time when Mr. Denson first showed you the paper?

A. It was the day after. [582]

Q. The day after, that was Sunday then?

A. Sunday he showed me.

Q. He had more than one of these papers such as Exhibit 1 for identification?

A. Three, in triplicate.

Q. And is that paper now in the same condition as it was when Mr. Denson presented it to you,

(Testimony of Mrs. Irene Gladys Mapes.)

except for the lead pencil interlineation, with the other sheets attached, which you say was made by me?

A. I would say it was.

Q. They were made the following day, I think you said?

A. Yes, Monday, that is my recollection.

Q. And where did that occur?

A. In your office.

Q. Who were present on that occasion?

A. Mr. Denson, my son, you were there and I was there.

Q. Do you know anything about Miss Yparra-guire, my secretary?

A. She was there.

Q. She was in and out?

A. In and out.

Q. What time of the day did this meeting in the office occur?

A. It was early in the afternoon.

Q. Do you remember any particular instructions that Mr. Denson gave with regard to the preparation of the document for final execution and sending it to him? [583]

A. Yes, he wanted it sent to him down to, I believe, Los Angeles and have it marked "Hold."

Q. And the envelope containing it marked "Hold"?

A. Yes.

Q. Do you know what hotel he mentioned, if any?

A. No.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Do you recall the Biltmore?

A. It was one of the large hotels.

Q. Now with respect to the lead pencil interlineations and the yellow sheet attachments, what do you know about their being discussed at this meeting with Mr. Denson?

A. They were all discussed with Mr. Denson at that meeting.

Q. And what would you say as to whether any objections were made to any of the lead pencil interlineations as they were read? Was the document read to you all there at the time as changes were made?

A. Yes.

Q. They were discussed, were they, various changes?

A. Well, they were read and discussed.

Q. And as finally finished, with the changes made and yellow sheets attached as you see it now, was any objection made by Mr. Denson to it?

A. No.

Q. Or by you or Charles?

A. No. [584]

Q. Were any instructions given me, so far as you know, with regards to having it typed?

A. Yes.

Q. In its changed form?

A. In its changed form.

Q. What were the instructions?

A. To get it out as quickly as you could and mail it to him in Los Angeles.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Do you remember anything being said by Mr. Denson about the importance of getting it down to him that evening, if possible?

A. He was very anxious to get it as quickly as he could.

Q. What, if anything, was said as to why he wanted it sent to him as quickly as possible?

A. He wanted to show it.

Q. Repeat his language, if you can, as to just what he said.

A. He said he was very anxious to show this paper, to show that at a later date he might be a part of the hotel.

Q. Did he say anything about who he wanted to show it to?

A. I think to Mr. Gock, yes.

Q. Have you now related substantially all that you recall that transpired at the meeting in my office when the agreement was discussed for re-drafting?

A. No, it was always contended that this was just a preliminary agreement and later we would get together to agree—— [585]

Q. (Interrupting) Well, what I am trying to find out, what took place at that particular meeting. Was anything said then as to whether it was a preliminary agreement or the final agreement or the like?

A. Yes.

Q. What was said and who said it?

A. Mr. Denson said this was a preliminary

(Testimony of Mrs. Irene Gladys Mapes.)

agreement and we would see if we could get together to agree and that I was supposed to be taken care of. At a later date if we could agree, I was supposed to be considered.

Q. In connection with this statement that you already testified to, that he wanted the document to show, do you remember anything being said by me as to why he had this agreement now when the final agreement or lease was supposed to be drawn within ten days or so?

A. You asked us why we would have this preliminary agreement when we planned to have the real agreement drawn later.

Q. Mr. Denson was there during the entire conversation?

A. Yes, Mr. Cooke.

Q. You all went out together?

A. Yes.

Q. I don't know as I got an answer to that other question, but I asked you to state, if you recall, what, if anything, I said about why we should have this preliminary agreement when the final lease was to be prepared within ten days or [586] something like that?

A. Yes, you asked why we would want this preliminary agreement drawn, in view of the fact there was to be one later.

Q. Who was that question addressed to, so far as you know?

A. Mr. Denson.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. What did Mr. Denson say?

A. He wanted this to show.

Q. That is when that came up?

A. Yes. When Mr. Denson presented this paper, I think I asked him why I should sign this preliminary paper when I should get the real papers soon.

Mr. Cooke: We offer the Exhibit 1 for identification in evidence, your Honor, as exhibit on cross-examination.

Mr. Platt: We object to it, if the Court please, upon the ground it is a self-serving document.

The Court: Is that the document Mr. Denson brought with him from California?

Mr. Cooke: That is the testimony of the witness.

Mr. Platt: No, your Honor, it is not the document Mr. Denson brought. It is a document revised and interlined by notations, primarily by counsel. It is not the document brought by Mr. Denson.

Mr. Cooke: My document I mean the typewritten portion. The witness identified the typewritten portion as being [587] the document. She testified all the interlineations and the yellow sheet were put there by me, so you know just what part of the document.

The Court: All done in the presence of Mr. Denson, was it, the changes made?

A. Yes.

The Court: Objection overruled. Admitted in evidence as Defendant's Exhibit 1.

Mr. Platt: If your Honor please, may I ask the witness a question?

(Testimony of Mrs. Irene Gladys Mapes.)

The Court: Yes. I will withdraw the ruling.

Q. (By Mr. Platt): Were those interlineations and notations read to Mr. Denson?

A. Yes.

Q. Who read them?

A. Mr. Cooke.

Q. Did Mr. Denson make any observations with respect to them?

A. Well, he listened the way the rest of us did. He agreed that they were all right.

Q. Isn't it a fact, Mrs. Mapes, that Mr. Denson, upon that very occasion, told Mr. Cooke to put this agreement in legal form and that was the agreement you signed and which was sent to Los Angeles?

A. To put this paper, this agreement, in legal form?

Q. Put the agreement submitted by Mr. Denson to Mr. Cooke and [588] to you, didn't Mr. Denson say and tell you and Mr. Cooke that Mr. Cooke should put it in legal form and send it to him to the Biltmore Hotel, Los Angeles?

A. No.

Q. He didn't say that?

A. No. Oh, to send it to Los Angeles?

Q. Yes.

A. That part yes, but not to put it in legal form. It was a preliminary agreement.

Q. Well, I am asking you if he didn't make that statement to tell Mr. Cooke to put it in legal form and send it to him in Los Angeles? That is his testimony.

A. No.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Well, is the agreement that was sent to Mr. Denson to Los Angeles the identical agreement now which is being offered in evidence?

A. I am sorry, I can't say. I haven't read those yellow papers since they have been offered in evidence here.

Q. Isn't it a fact that the agreement, so far as evidence shows now, by your evidence too, that these sent to Mr. Denson to Los Angeles did not contain any of the riders or interlineations?

Mr. Cooke: I submit this is improper cross-examination with reference to admissibility of a document. All we have to as to that is to show just how the document was made, [589] whether it corresponds to the other documents, does not have anything to do with the admissibility.

The Court: If these yellow paper memoranda were not afterwards incorporated in this contract, for what purpose are they offered?

Mr. Cooke: They are irrelevant here, which is the objection I made to a thousand questions on the same basis, but it seems to me that the plaintiff has been allowed to go into all these preliminary conversations and talks and we want to show now just how the transaction occurred.

The Court: I will admit the document if those yellow papers are omitted.

Mr. Platt: We have no objection your Honor, if the riders and interlineations are omitted, that this go in.

The Court: If the offer is to all of them, the objection will be sustained.

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Cooke: We take exception.

Q. (By Mr. Cooke): You have, while you were on the stand here, examined this Exhibit 1 for identification, have you not?

A. Yes.

Q. And you note the lead pencil interlineations the yellow sheets attached by pins?

A. Yes.

Q. I will ask you to state if you can whether the document, with these yellow sheets attached and the lead pencil interlineations [590] are the same now as they were at the conclusion of the meeting on September 24th in my office?

A. As far as I could state they look the same.

Q. They were taken up more or less item by item and discussed at that meeting, were they not?

A. Yes.

Q. With Mr. Denson?

A. Yes.

Q. And approved by you and he and Charles as we went along?

A. Yes.

Mr. Cooke: We renew the offer.

The Court: The same ruling.

Q. About what time was it when that meeting was adjourned in the afternoon of September 24th?

A. It was early in the afternoon.

Q. I said when it was adjourned, when you finished, when you separated and went out?

A. I wouldn't recall exactly, Mr. Cooke; I would say early in the afternoon, about two o'clock.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. When did you meet there first?

A. Right after lunch.

Q. How long were you there?

A. I would say about an hour.

Q. Did all three of you stay there, with myself, for that full time?

A. Yes.

Q. There was a document introduced in evidence here with your signature on it. Do you remember that? Copy of the draft as finally prepared. Do you know what document I refer to?

A. Yes, the one this morning?

Q. Yes. Do you remember anything about that document?

A. I can't recall.

Q. The next time that you saw or heard from Mr. Denson on this matter of preliminary contract was October 4th, I think you said?

A. When he signed the contract October 4th, yes.

Q. Did you have any communication by telephone or the like prior to that?

A. Yes, Mr. Denson called up and said that he wanted the changes to include the stores.

Q. That is as to the gross income to be calculated on the entire building, including the stores?

A. Including the stores.

Q. That was mentioned by him in the telephone call?

A. In the telephone call.

Q. That call was when with reference to October 4th?

(Testimony of Mrs. Irene Gladys Mapes.)

A. It was as soon, I guess, as he received it, right after the 24th. Some time in there, a day or two later.

Q. State if you recall, whether there was anything said about [592] the entire building, including the stores, being included in this agreement for the purpose of fixing the rental at the conference that was had in my office on the 24th?

A. No, this would exclude the stores.

Q. The talk that we had there?

A. Yes.

Q. The first you knew of his insisting on the stores being included was when he called up?

A. Yes, when he called up?

Q. Something has been said in the testimony about a portion of this conference of September 23rd and 24th being down at your house. That was on Sunday, I think?

A. No, I don't recall it being in my house.

Q. Well, isn't it Mr. Denson's testimony that you were there and I was there and we talked about this agreement down at your house?

A. Yes.

Q. Do you remember of my being there in the afternoon?

A. At that time, no.

Q. Or in the evening or afternoon of the Sunday preceding the day when we met in the office, and I was invited to dinner, do you remember his testifying about that? I am trying to refresh your recollection.

(Testimony of Mrs. Irene Gladys Mapes.)

A. Yes, I recall it and it isn't clear in my mind that you were there that Sunday. I recall you being there on a Sunday [593] but not that Sunday.

Q. Coming on down to October 4, 1945, Mr. Denson came up from Los Angeles or San Francisco?

A. On October 4, 1945.

Q. Did he have any other business, as far as you were concerned, at that time excepting concerning this agreement?

A. No.

Q. And did you talk with him on that date, did you, October 4th?

Q. Where was that talk?

A. Well, it was at the home.

Q. You had a talk in my office also?

A. Yes, we went back to your office later that day.

Q. You first met at your home, did you?

A. Yes, as I recall.

Q. Mr. Denson and you and who else were present, if any one?

A. Charles.

Q. That is all?

A. Yes. You were there.

Q. I am talking about at your home.

A. Oh, at the home?

Q. Yes.

A. This October 4th—you asked if we were all together in the home?

Q. Yes.

A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Mr. Denson was there?

A. Yes.

Q. Some of those papers were signed and some were unsigned, is that your recollection of it?

Mr. Platt: Your Honor please, if Mr. Cooke wants to do the testifying he ought to take the witness stand.

Q. What is the fact as to whether all papers were signed that you had for discussion at that time?

A. This paper, the finished paper, you mean?

Q. Did you sign any papers on October 4th?

A. Yes.

Q. Did you sign some yourself?

A. Yes.

Q. Did Mr. Denson sign any?

A. Yes.

Q. How many did you sign, do you remember, duplicates I refer to?

A. Oh, four or more.

Q. There was a change made, according to Mr. Denson's testimony, and I think you have testified the same thing, in the contract that was finally signed up on that day as to the entire building being included?

A. Yes.

Q. And initialed, you remember that?

A. Initialed.

Q. Had you and Mr. Denson agreed, as you understood it, upon the change in the paper before you came up to the office on that date?

(Testimony of Mrs. Irene Gladys Mapes.)

A. No, he came up to have it changed on that date.

Q. I mean had you agreed down at your house on the entire building clause going in there as an amendment before you came to my office?

A. Yes.

Q. Who came to my office in regard to the matter?

A. Mr. Denson, my son Charles, and myself.

Q. And do you remember what discussion, if any, took place at the office in regard to the matter?

A. Yes, it was then in regard to not excluding those stores, to take in the whole floor, was when Mr. Denson said, "Well, this is just a preliminary paper and at a later date we will see that you are taken care of."

Q. Was any discussion with regard to the matter of the entire building being included by an interlineation or the contract rewritten or the like, was that discussed?

A. It was just decided to include it.

Q. How?

A. Well, what would you say when you write it above?

Q. Interlineation? [596]

A. Interlineation.

Q. And initialed too?

A. Initialed too.

Q. To identify it? A. Yes.

Q. And that was done?

(Testimony of Mrs. Irene Gladys Mapes.)

A. That was done.

Q. And then duplicate of that, one or more, was delivered to him and you retained some?

A. Yes, we all received one, Charles received one and I received one.

Q. And what next took place in regard to the matter at that time, do you recall?

A. Well, we left your office and Mr. Denson promised to return shortly after that and get together in a discussion of a lease.

Q. Before you left the office what occurred in regard to Mr. Denson giving you a check for some money, do you recall about that?

A. Oh yes, Mr. Denson took out his check book and wrote a check for ten thousand dollars.

Q. And handed it to you?

A. Yes.

Q. Was anything said at that time in regard to how or when or by whom the other ten thousand was to be paid? [597]

A. No.

Q. Was there anything said at any time as to who was to pay the other ten thousand?

A. No.

Q. You gave him a receipt, which I think counsel presented to you and you already identified it as yours, for the ten thousand?

A. Yes.

Q. Then the next that occurred in regard to the

(Testimony of Mrs. Irene Gladys Mapes.)

hotel transaction after you finished there in my office on this date—what next occurred, let me ask you that way?

A. That same day?

Q. No, we finished with that phase. What next occurred in regard to the matter of the Denson agreement?

A. When Mr. Denson left that afternoon he promised to return shortly after that again to discuss the lease?

Q. Where did he make that promise?

A. Right outside in the street.

Q. Right after you had left the office?

A. Right after we had left the office.

Q. And who were present at the time he made that promise?

A. My son Charles and I were there.

Q. What was it he promised?

A. To return shortly after that and discuss the lease, the terms of the lease. [598]

Q. You say shortly afterward, was any day or week or anything of that kind mentioned?

A. Well, he said he would come back as quickly as he could.

Q. When did he come back, if at all, in the matter?

A. The next time he came back was in January.

Q. Now intermediate that date and September 24th you didn't have any personal meeting with him at all, did you?

A. No, no personal meeting.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. You told us something this morning about a communication, I believe. Did you have any telephone communication with him?

A. Yes, I phoned him in November.

Q. You phoned him?

A. Yes.

Q. Where was he when you phoned him?

A. At Visalia.

Q. And you got him, did you?

A. Yes.

Q. And what did you talk about?

A. Well, I told him that we had started the work on the building and he told me that Mr. Moorehead had phoned him that the elevation plans were ready and that we were ready to start.

Q. You say in November. Can you fix the time more definitely than that? [599]

A. Yes, this was November 26th.

Q. Do you remember that or did you check it with your telephone bill?

A. I checked it with the telephone bill.

Q. You said that you told him that the hotel construction had started?

A. Yes.

Q. And he said that Mr. Moorehead had advised him substantially to the same effect?

A. To the same effect. He had phoned him earlier, before that, I believe around the 19th.

Q. Was there anything else said about the preparation of this lease, who was to prepare it or the like?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I asked him to come up and we would get together on the lease, we would discuss the lease and have it drawn.

Q. What did he say?

A. He said he would.

Q. At the meeting of October 4th you heard Mr. Denson's testimony to the effect that he told me to prepare the lease and he would sign it, or words to that effect?

A. Yes.

Q. Was anything of that kind said?

A. No.

Q. By him or anybody?

A. No. [600]

Q. Going back to this talk of November 26, 1945, just tell us what you said to him by way of requesting he come here to get together on the lease.

A. I told him that we had started construction of the building, that is the demolition and preliminary part, and I asked if he wouldn't come up now and get together and discuss drawing up the lease.

Q. What did he say?

A. He said he would.

Q. Was any time fixed for him to do so?

A. Well, right away. My thought was he would come just as quickly as he could.

Q. I was asking more particularly what was said.

A. He said he would come up as quickly as he could.

Q. No date was set?

A. No date was set.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Those were the words, as you recall it, that he used, that he would come up as quickly as he could?

A. Yes.

Q. At any time did he ever ask that you come down there for the purpose of discussing terms of the lease?

A. No.

Q. Well, did he come up within the week or as quickly as he could?

A. No. [601]

Q. When did he come next?

A. In January.

Q. That I think you told us about, January 26th?

A. Yes, 25th or 26th.

Q. So from November 26th two months intervened until he came?

A. Yes.

Q. Did you have any communication during that two months?

A. Yes, I called him again in December, called him twice in December.

Q. Do you remember when the first call in December was?

A. Yes, December 12th.

Q. Where was he?

A. He was in Visalia.

Q. How do you know it was the 12th? Did you check on it the same way?

A. I checked it; I wouldn't know otherwise.

Q. What was the purpose of making the call on December 12th?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I asked him about coming up, why he didn't come and to come up and get together to draw this lease.

Q. Why was it important for you to press the urgency upon him?

Mr. Platt: Objected to as mere opinion and a conclusion.

Mr. Cooke: I feel she has a right to state, explain, why it was important to her. Her testimony shows she repeatedly urged him to come. [602]

The Court: She may answer the question.

A. Well, I was very anxious to have this lease drawn up. I thought we should have an understanding between Charles and the association.

Q. On a firm basis?

A. Yes.

Q. Well, that was December 12, 1945?

A. Yes.

Q. What did he say in regard to coming up or consummating this transaction?

A. Well at that time he said he would come up. He was negotiating for the sale of his lease on the Johnson Hotel.

Q. That was on the hotel he had at Visalia?

A. Yes.

Q. Did he indicate any time when he would come up?

A. He promised to come up as soon as he could. I would take it that this was sort of demand on me to——

Mr. Platt: (Interrupting) We ask that the answer be stricken.

(Testimony of Mrs. Irene Gladys Mapes.)

The Court: It may go out.

Q. What did he say as to when he would come?

A. He promised to come up right away.

Q. I asked you if he fixed any time?

A. He would come up right away, within a couple of days.

Q. That is all the time he fixed? [603]

A. No, no definite date.

Q. Well, did he come within the several days, or when did he next come?

A. Not until January.

Q. You had another phone communication?

A. On December 27th.

Q. '45?

A. '45.

Q. Did you call him or he call you?

A. I called him.

Q. What did you tell him? What was the purpose or object of the call?

A. Now that Christmas was over I thought we should get together.

Q. Did you tell him that?

A. Yes, and he hadn't come and I wondered why he didn't come.

Q. Is that what you said to him?

A. Yes, and I was anxious to get this lease drawn up.

Q. Was anything said about this agreement between him and Charles at the same time or not?

A. Yes, I asked him about the agreement. I had always—I think in my early testimony today I men-

(Testimony of Mrs. Irene Gladys Mapes.)

tioned the agreement and the lease, to get together on the lease so we could draw the lease.

Q. Is that the substance of what you told him over the phone? [604]

A. Yes.

Q. What did he say in response?

A. He promised to come again.

Q. Just how did he say it?

A. He said he was finishing winding up his negotiations of the hotel. That was the excuse he gave on several occasions.

Q. That hotel refers to his hotel at Visalia?

A. The Johnson Hotel, and that he would come up.

Q. Have you related now the substance of that conversation as nearly as you recall it?

A. Yes. Oh, we discussed about the building going along.

Q. In this same talk?

A. Yes, and we spoke about the demolition.

Q. The next meeting after that I think you told us the next discussion I think you said was January 26th or 27th? A. Yes.

Q. Did you have any further phone talks with Mr. Denson intermediate this date that you just told about and January 26th or 27th?

A. After January 27th?

Q. No.

A. Before?

Q. In between. You told us about the phone talk you first had with him December 27th.

(Testimony of Mrs. Irene Gladys Mapes.)

A. No, not again until he had come in person in [605] January.

Q. And how and why, as far as you know, did he come to Reno January 26th and 27th?

A. I thought he came up——

Mr. Platt: (Interrupting) Well now——

A. (Interrupting) Well, he came, as I understood, to get together on this lease, to draw this lease.

Q. Did you have any communication of any kind with him in regard to his coming up on the 26th or 27th of January?

A. He just came.

Q. And when he just came did he come down to the house? A. Yes.

Q. Did you have any discussion with him there?

A. I asked him if we could get together to draw that lease and that he and Charles get together on their agreement.

Q. What did he say?

A. He told me he had to return back that morning, but he would come back later.

Q. Was there anything said preliminary to your bringing up the matter of the hotel? That didn't just start the very first part of the conversation, did it?

A. Oh no, he was well informed that that was really the beginning of the hotel.

Mr. Platt: I ask that that be stricken.

The Court: It may go out.

Q. What was the first part of the conversation?

(Testimony of Mrs. Irene Gladys Mapes.)

You said, [606] "Qood morning" and shook hands and the like of that?

A. I said, "Now that we have our permit and plans and specifications and all, let us get together and discuss this lease and draw the lease."

Q. That is what you said?

A. Yes.

Q. The permit was for what?

A. To permit starting the real plan.

Q. Of the city authorities of Reno?

A. The city authorities.

Q. And the conversation went from then on, what was the gist of it?

A. Well, he and Charles went over the plans and went down to the office and discussed the plans and checked through, I guess he did, the specifications and went over the work.

Q. They went out for that purpose?

A. Yes.

Q. How long were they gone?

A. Oh, a good part of the day.

Q. You weren't with them?

A. No.

Q. And they returned to the house later on, did they?

A. Yes.

Q. What time did they return?

A. I imagine he had dinner with us that [607] night.

Q. Was the matter of the hotel operations, plans and subject matter discussed that day while you were personally together again?

(Testimony of Mrs. Irene Gladys Mapes.)

A. I can't recall if they were further that day but the next day I asked him—that would be the 26th?

Q. 26th or 27th?

A. The 27th?

Q. He came up then the 26th?

A. He came up the evening of the 24th.

Q. And you asked him then about the lease, and what else was mentioned, anything else?

A. And that he and Charles get together to agree on their agreement.

Q. How did you present that to him? Just how did you say it?

A. Well, I said he had promised to come back from the very start to discuss this agreement and have it drawn up and that we were putting it off and the plans and specifications were ready now, "Let's settle down and get together on this agreement."

Q. That is what you told him?

A. That would be the sense of it.

Q. That is substantially your best recollection, is that right?

A. Yes.

Q. What did he say to that? [608]

A. He said he had to return to Visalia—the sale was still active, and he would come back.

Q. He said the sale was——

A. (Interrupting) He had to wind up the business of the sale.

Q. The same hotel?

A. The same hotel.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Did he say when he had to return?

A. He said that he had to leave immediately.

Q. Did he leave immediately?

A. Yes, he did, that day.

Q. What, if anything, was said about when you would resume the discussion?

A. He was to come back.

Q. What did he say about it?

A. He would come back.

Q. That is what he said?

A. Yes, that he would come back. I don't just recall. It was always that when he would come back it would be as quickly as possible. There is a——

Q. (Interrupting) There wasn't any date mentioned?

A. No, there wasn't any date set but he said he would return within a few days.

Q. Who was present at this talk on the day following beside you and him?

A. On the 26th? [609]

Q. Yes.

A. Charles.

Q. That was the date Mr. Denson left?

A. Yes.

Q. And you and Charles were there at that conversation?

A. Yes.

Q. Anybody else beside you and he and Mr. Denson?

A. No.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. It took place down at your house?

A. Yes.

Q. Now have you told us all that occurred with regard to this hotel subject on this January 24th and 25th occasion? Anything else?

A. I think I said something about plans and specifications there. I told you that. I don't recall right now.

Q. When was the next time that you had any communication with him, either personally or by phone?

A. In March.

Q. What time in March?

A. The 25th, I believe.

Q. Is it true from January 28th to March—

A. (Interrupting) January 26th.

Q. That is my error, January 26th, 1946 to March 25th that you hadn't heard from him at all?

A. No, I hadn't heard from him at all. [610]

Q. Or met him or had any contact with him?

A. No.

Q. Do you know whether Charles had had any meetings with him during that time?

A. I can't recall. No, I don't remember.

Q. Well, on March 25th what occurred then?

A. Mr. Denson called the home and he called for Charles and Charles wasn't there. He said he was very anxious to have—do you want me to tell?

Q. Yes, I asked you what occurred, what did Mr. Denson say?

(Testimony of Mrs. Irene Gladys Mapes.)

A. He said that he was very anxious to have Charles come down to Los Angeles and meet with this decorator.

Q. How was that all brought about, who called who?

A. Mr. Denson called Charles.

Q. And you answered the phone?

A. Yes.

Q. Was Charles there at the time?

A. No, Charles wasn't there.

Q. He was still in service?

A. No, he was out of service. He was at home that time but he wasn't there. I said that he would be there later and I recall becoming very angry with him at that time——

Q. (Interrupting) That isn't responsive to the question. Something was said here by both you and Mr. Denson about the length of the telephone call, eight minutes. Was this the one? [611]

A. Yes.

Q. March 25th?

A. March 25th, that is the one I am referring to, that lengthy one, and Mr. Denson said it was March 25th.

Q. And he called Charles?

A. Yes.

Q. And you answered? A. Yes.

Q. And you proceeded to go ahead and talk?

A. Yes.

Q. And beside he said he wanted Charles to come

(Testimony of Mrs. Irene Gladys Mapes.)
down to Los Angeles, what was said during this 8-minute time about the proposed lease?

A. I asked if he wasn't getting the cart before the horse, that he was supposed to come here and get together in drawing up a lease and now we were into decorations, wasn't that getting the cart before the horse. I told him how he was here on January 25th and 26th and promised to come back. He hadn't returned, and he said at that time that the preliminary agreement had expired and that that didn't have any meaning as far as its function was concerned.

Q. What preliminary agreement are you referring to?

A. The one dated September 24, 1945.

Q. '45?

A. 1945. [612]

Q. Anything further, Mrs. Mapes?

A. I asked him after that, even after that, wouldn't he get together with us.

Q. This is part of the same talk now, is it?

A. Yes.

Q. What did he say in reply?

A. He said he would.

Q. I would like you to state the entire conversation.

A. He said he wanted to talk with Charles first, he would call him again tomorrow night, that he was very anxious for him to meet with this decorator and I asked him wouldn't he get together with us on this drawing up of the lease and agreement and he said he would.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. No time was fixed for getting together any more than that?

A. No, he was calling the next night to talk with Charles.

Q. Which one of these several meetings was it that he was indisposed and ill, do you remember that?

A. I don't remember.

Q. Well, have you told us now in substance all you recall that was said by you and by him at this March 25, 1946 talk, this eight-minute talk?

A. Oh, there was quite a lot of discussion, There was argument——

Mr. Platt: I ask that that be stricken, your Honor.

The Court: Just what was said? [613]

Q. Was anything more said?

A. No.

Q. This statement of yours of the cart before the horse, I take it had reference to the decorations before you had definite plans on the building?

A. Yes.

Q. Do you know anything about he and Charles having a meeting shortly after March 25th?

A. Yes, they had a meeting April 1st.

Q. You weren't there?

A. No.

Q. All that you know about that is what was reported to you afterward?

A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. You know Charles left home?

A. Yes.

Q. He was gone for several days?

A. Well, two or three days, yes.

Q. And the next meeting with Mr. Denson, if I have the chronology of this right, was about April 10th?

A. Yes.

Q. At that meeting what, if anything, was said by Mr. Denson about having a meeting with Charles on the 1st of April? Was that discussed or mentioned in any way?

A. No, not while I was there. [614]

Q. Weren't you there during the entire meeting?

A. No, I wasn't there during the entire meeting.

Q. I think you told us you had to go out on some social errand?

A. Yes.

Q. Mr. Denson came to the house?

A. Mr. Denson came. I think his appointment was for ten o'clock and my appointment was for ten. As soon as the meeting took up, I asked if I could give my report and be excused.

Q. The meeting, you mean with Charles?

A. No, the 20th Century Club. I am a director.

Q. Let me find out if any business was transacted or discussed about the lease with Mr. Denson before you went to the 20th Century Club?

A. I wasn't there when he arrived.

Q. And when you came back he was there?

A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. What time did you come back?

A. I would say just before eleven, just as quickly as I could. I couldn't be accurate on that.

Q. Who was there when you came back, who was present?

A. My brother was there, my only brother, Mr. Hall, and my son Charles, Mr. Denson and myself.

Q. How soon after you arrived did the subject of this lease, this agreement, or whatever it was, the subject of the [615] hotel come up?

A. Very shortly after I came. I think I commented I was out minding somebody else's business, I didn't have enough of my own business to attend to, had to mind some one else's business. When I came in I apologized for being late and then Mr. Denson started to talk.

Q. What did he say, the substance of it?

A. He said, "Mrs. Mapes, you agreed to build me a hotel and after agreeing to build this you begged me to take your son, Charles, in in association; in consideration of you I accepted Charles without looking into his ability or background.

Q. You are repeating what he said as nearly as you can?

A. As nearly as I can, the sense of it. And he said, "Now Charles refuses to enter into a lease with me. I have a binding contract and I propose to have it stick." You know, have it stand. He said, "If Charles won't enter into a lease with me, I am ready and able to enter into one myself, accept one myself." That is the sense of it.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Did he say that right along without interruption?

A. Oh, it just came right out in one breath, continuous.

Q. What I am getting at, neither you nor Charles made any reply during the time he made any statement?

A. I was shocked; no, I couldn't.

Q. You did finally make a reply?

A. Yes. [616]

Q. You told us about that this morning, I believe, on cross-examination?

A. Yes. I was upset when he told me I begged him to take my son in, because this was all set up for my son.

Q. Well, along that subject, I might ask you if there is any truth in it whatever that you ever begged or solicited him to take your son?

A. From the very start it was my son's hotel to decide what was to be done.

Q. Did you ever directly or indirectly, by innuendo or intimation of any kind, tell him that you were building a hotel for him, Mr. Denson?

A. No.

Q. You heard his testimony?

A. Yes.

Mr. Platt: I submit, if the Court please, that is deduction drawn by counsel and the question isn't justified from the evidence and I ask that the answer be stricken.

(Testimony of Mrs. Irene Gladys Mapes.)

The Court: It seems to me that the witness brought out testimony. She said this morning to the effect that Mr. Denson said she had promised to build a hotel for him. Now Mr. Cooke asked her if she ever did promise to build a hotel for him. Objection will be overruled. What is the answer to the question? [617] A. No.

Q. You told us in your testimony this morning something about the hotel being built especially and primarily for your son and that Gloria was to have an interest in the proceeds in some way?

A. Yes.

Q. How long had that been in contemplation?

A. Oh well, that was a great many years before, six years before or something like that.

Q. Was it in contemplation at the time you and your husband acquired it?

A. Yes, my husband's idea was it was always to be a hotel and Charles was to benefit by it and Gloria was too.

Q. That was upon every conversation with Mr. Denson?

A. I always stressed the fact that it was my husband's idea and I was carrying out his wishes. I think I stated it to many people, not only Mr. Denson.

Q. During this talk on April 10, 1946, you mentioned names of certain persons present there. Was Gloria present during that conversation?

A. No.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. Was she present at any of the conversations in which this hotel lease subject was discussed between you and Mr. Denson?

A. No. [618]

Q. She was present at some meeting held down in the Fielding Hotel, I think you told us, or the Sir Francis Drake?

A. That meeting was the day after V-J Day?

Q. Yes. A. Yes.

Q. The subject of the lease wasn't discussed at that time?

A. No.

Q. Counsel asked you this morning whether you had ever offered a lease or a form of lease on that property to Mr. Denson for his signature and you answered no.

A. No.

Q. Did Mr. Denson ever offer you any form of lease for your signature? A. No.

Q. Nobody had any form of lease, did they, I mean between you and him?

A. No.

Q. This meeting that was mentioned in September, September 24, 1945, document that is to be held and discussion had as to terms and conditions of the 20-year lease to be agreed upon, if you could, was any such meeting ever had?

A. No.

Q. From the time that that paper was signed on October 4th, finally executed on October 4, 1945,

(Testimony of Mrs. Irene Gladys Mapes.)

down to about April 10, 1946, what was your attitude as to whether you would meet [619] with Mr. Denson and discuss terms of the lease?

A. I was very anxious to meet with him and had asked him several times to meet with me.

Q. When you learned that your son Charles and Mr. Denson couldn't get together, or wouldn't get together, what, if any, effect did that have upon your attitude in regard to a lease with Mr. Denson?

A. Was that the final when I learned that he couldn't get together?

Q. Yes.

A. Of course, I was interested in a lease with my son and Mr. Denson to be associated.

Q. Well, what I am trying to find out is what effect did the fact that you learned that your son and Mr. Denson couldn't or wouldn't agree between themselves to operate that hotel, what effect did that have upon you in regard to signing a lease with Mr. Denson alone?

A. Oh never would I ever thought of signing a lease with Mr. Denson alone. It was my son whom I was interested in seeing this building erected for. We were putting all our finances and backing into it for my son.

Q. At the time on April 10th when Mr. Denson told you that you had promised to build him a hotel and begged him to take your son in, you made the reply that you told us about this morning?

A. Yes. I had never heard of that. He gave me that talk and [620] I was shocked, that I had to

(Testimony of Mrs. Irene Gladys Mapes.)

beg him to take my son, and as I say I think it was the mother that rose in me. I couldn't think of anything else and I only thought of my love for my children——

Q. (Interrupting) The point I am trying to get at, Mrs. Mapes, after you learned that, that ended your interest in any lease with Mr. Denson?

A. Absolutely. I turned to him and I said, "Now it is all very clear why we never could get together on this lease; that explains it."

Q. At that time was anything said about agreement between Charles and Mr. Denson in regard to division of the proceeds?

A. No.

Q. That was discussed previously and you were present at one time, I think you told us?

A. Earlier we discussed it, but not at that time in connection with this final.

Q. Nothing was said at that time?

A. No, there was nothing said.

(Short Recess)

MRS. MAPES

resumes the witness stand.

Mr. Cooke: I think that is all of the examination of Mrs. Mapes at this time. [621]

Recross-examination

By Mr. Platt:

Q. Mrs. Mapes, I call your attention to the agreement that has been dated 24th day of Septem-

(Testimony of Mrs. Irene Gladys Mapes.)

ber, 1945, between you and Charles W. Mapes, Jr., and Mr. Denson, in evidence as Plaintiff's Exhibit "C", which you have already testified you signed?

A. Yes.

Q. Now in this agreement there is a provision, and particularly Section 1 thereof, which reads as follows: "That in consideration of the premises and for other valuable and sufficient consideration present and received, receipt whereof is hereby mutually acknowledged by the parties, that contemporaneously with the execution and delivery hereof, the second parties shall deposit with the first party * * *" whom do you understand to be the second parties?

A. Mr. Denson and my son.

Q. And whom do you understand to be the first party?

A. I am supposed to be the first party. I am.

Q. " * * that the second parties shall deposit with the first party * * *", that is you?

A. Yes.

Q. " * * the sum of \$20,000 in cash as a guaranty of their good faith and by way of inducement for the first party to enter into this agreement." [622]

A. Yes.

Q. Now do you understand by that Mr. Denson, one of the second parties, is obligated to deposit with you, the first party, ten thousand dollars and that your son, the other second party, was obligated to deposit with you an equal amount?

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Cooke: I object to that as asking the witness for construction of the agreement. It is a written agreement, it is in evidence, and what her understanding is is immaterial if it isn't the same as the written document.

Mr. Platt: If the Court please, in the light of this cross-examination of this witness, if Mr. Cooke will concede that this is a reasonable and proper interpretation of this agreement, I will withdraw the question.

Mr. Cooke: I do not know what you mean, a proper interpretation.

Mr. Platt: That Charles W. Mapes, Jr. in accordance with section 1 of that agreement, shall deposit with Mrs. Mapes the sum of ten thousand dollars and that Mr. Denson shall deposit an equal amount.

Mr. Cooke: That is a peculiar request to make. I am simply objecting that the document be allowed to speak for itself without regard to what Mrs. Mapes understood or what Mr. Denson or Charles W. Mapes understood about it. That is not what courts are for, to take testimony of Tom, Dick and Harry as to understanding of a written agreement, but it is an agreement signed by the parties and no question about [623] being any fraud or mistake, that must speak for itself.

The Court: However, Mr. Cooke, the question of whether or not the plaintiff, by failure to exercise his privileges under this contract within a certain period of time, and whether or not the parties con-

(Testimony of Mrs. Irene Gladys Mapes.)

sidered that he had, in a sense, defaulted, wouldn't that be colored in some way or be affected in some way by an understanding on the part of Mrs. Mapes as to whether or not he was to pay ten thousand dollars or twenty thousand dollars? For instance, if she thought that he was to pay twenty thousand dollars and hadn't paid it, the recourse she would take might or might not be different from that that actually occurred after the signing of this contract.

Mr. Cooke: My answer to that would be that she is bound by the written agreement. If that said ten thousand dollars paid by one——

The Court: (Interrupting) Objection overruled. Answer the question.

A. My answer is no.

Q. Your answer is no?

A. That each one is supposed to deposit ten thousand dollars apiece, that is the question? [624]

Q. Yes.

A. My answer is no.

Q. Well, your answer being no, how did you understand Section 1 of this agreement to which I have called your attention?

Mr. Cooke: We wish to interpose an objection, the contract is the best evidence; that this is an attempt to violate the rule against varying the terms of a written agreement by oral testimony.

The Court: The Court agrees with the proposition that it is not for a witness to interpret provisions of a contract, but for the purpose of getting an

(Testimony of Mrs. Irene Gladys Mapes.)
understanding or explanation of the contract, where Mrs. Mapes is one of the parties to this contract, subsequent to its being executed, I think we have a right to know how she felt about it along those lines, and the objection will be overruled.

(Question read.)

A. That I was to receive twenty thousand dollars on the execution of this agreement.

Q. Who was to pay the twenty thousand?

Mr. Cooke: Same objection, your Honor.

The Court: Same ruling.

A. I don't think it was ever discussed, Mr. Platt. I wouldn't know. [625]

Q. I am not asking you about a discussion. I am asking about your understanding. You just said your understanding was that you were to be paid \$20,000.

A. Yes.

Q. I take it upon signing of this contract. Now how much was Mr. Mapes, your son, to pay, according to your understanding, and how much was Mr. Denson to pay?

A. I don't know. I didn't understand what either one were supposed to pay.

Q. Well, was it your understanding that Mr. Denson should pay any greater amount than your son, Mrs. Mapes?

Mr. Cooke: Same objection.

A. No, I wouldn't know.

(Testimony of Mrs. Irene Gladys Mapes.)

The Court: I don't know, that might get away from the thought we had in mind here.

Mr. Platt: Your Honor please, I can explain our position very briefly, if there is any question in your Honor's mind.

The Court: You may do so, Mr. Platt.

Mr. Platt: Because of the testimony given by this witness, it has been in effect testified to by her that Charles Mapes was to have a 70% interest and that Mr. Denson was to have a 30% interest and these are two reasons why that couldn't be a construction of this contract. One is that the agreement in effect establishes that both of them [626] were to pay twenty thousand dollars and the only inference is that they were taking an equal interest in this contract, so that the inference is very plain that if, according to Mrs. Mapes' testimony, Charles Mapes was to receive 70 per cent interest and Mr. Denson was to receive 30 per cent interest, it would certainly be an extraordinary and unusual thing that Mr. Mapes would not be required to pay more as a deposit than Mr. Denson, and if your Honor will read that contract, which your Honor undoubtedly has—and I am just endeavoring to refresh our recollection—you will find that there is an equal liability upon the part of Mr. Denson and upon the part of Mr. Mapes, not only in purchasing of furniture and equipment and accessories, but an equal liability in the execution of a chattel mortgage by both of them as guaranty to Mrs. Mapes for the payment of the debt, and of course from that record itself—I am

(Testimony of Mrs. Irene Gladys Mapes.)

only referring now to the question I asked and I expect to ask another one—but from that record itself, that contract itself, as far as we have proceeded the testimony of Mrs. Mapes can not be taken as testimony in accordance with the written agreement as entered into, but with the general understanding between the parties.

The Court: Read the question.

(Question read.)

Mr. Cooke: I would like to be heard.

The Court: You may do so. [627]

Mr. Cooke: I do not think that the argument made by Mr. Platt reaches the legal point. That might be addressed to a jury or the court on final hearing, final argument, as to just what the parties intended, etc., but here he is asking Mrs. Mapes what she understood by this agreement. I can't see any legal basis for that kind of a question. She would be bound by the agreement, she couldn't excuse herself if she intended to do something that she should not have done under the agreement, she could not come in and tell Mr. Platt: "I understand the agreement is so and so and that is my excuse." She would be held by that agreement and if she misunderstood it, didn't comprehend it correctly, that would be just her bad luck. Well, the same principle would apply on this, as I see it. The fact that she may have one understanding, whether correct or incorrect, is immaterial. She is responsible for the

(Testimony of Mrs. Irene Gladys Mapes.)

legal consequences if she has complied with the agreement, and if she has not complied with it, she is equally responsible. Now the fact that she has testified that there was a talk between Mr. Denson and Mr. Charles W. Mapes about 30 per cent and 70 per cent division does not, to my mind, bear upon this question at all. There is nothing about that that necessarily means there must be an equal liability all the way through. I know of partnerships, for instance, where a man goes into partnership and he pays a large price for a comparatively small interest. The matter of what it costs him to get in is not [628] any conclusive circumstance or fact as to how the profits are to be divided. We have partnerships where there is an old established concern and some new man comes in and wants to get in and he is willing to do almost anything to get in and that may be the case with Mr. Denson. He was willing to do almost anything to get in this hotel, there is plenty of evidence to indicate that, but if he agrees on the 70-30 division of profits perhaps that is his reason for it and if that is his reason, it has nothing to do with the question that everything must be equal, that because he is going to stand equally on the cost of furniture, etc., that he must necessarily have a 50-50 division, so I say this is going far afield from the issues in the case and can not be of any possible fundamental value and certainly is asking a lot of a witness what she understood as to this and expect the Court to give any effect to that understanding.

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Platt: If your Honor has any doubt about it, I would like to be heard briefly again.

The Court: Well, there is a provision in the contract that time is of the essence of it. Then in paragraph of the numbered paragraphs there is a recitation there that the second parties shall deposit with the first party the sum of twenty thousand dollars in cash as guaranty of their good faith and by way of inducement for [629] the first party to enter into this contract. I suppose this consideration would apply to that paragraph if that deposit had not been made within reasonable time or time provided in the contract. Isn't there something in here——

Mr. Cooke: Yes, at the time the contract is executed and delivered—"contemporaneously with the execution and delivery hereof."

The Court: What were you going to say, Mr. Platt?

Mr. Platt: I was just going to say, as I suggested to counsel, it seems to me in all fairness there should be either one or another position taken. Counsel insists that the contract is in writing and that is the way it should be interpreted. All right. But on the other hand, instead of leaving it to interpretation of the contract, his client testifies that the contract should not be interpreted as written that the understanding was that Charles Mapes was to have a 70 per cent interest and Mr. Denson have a 30 per cent interest, and you can't find any suggestion of anything like that in that contract.

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Cooke: Or anything against it.

Mr. Platt: In any event, if the Court please, they ought to make their position clear and the only way we can meet this testimony is to call the witness' attention to the [630] nature and character of the contract and what she understood when that money was accepted. My attention has been called to paragraph (b) of the Answer on page 15, which reads that "the twenty thousand dollars so required by paragraph 1 of said Exhibit A to be deposited by Charles W. Mapes, Jr., and the plaintiff, P. G. Denson, as guaranty of their good faith, was not deposited contemporaneously with the making of said Exhibit A or at all, except ten thousand dollars was deposited on or about October 4, 1945, but the remaining ten thousand dollars has never been deposited or tendered to the said defendant, Mrs. Charles Mapes," and I say, if the Court please, that allegation of that answer itself shows that the understanding was that Charles Mapes was to put up ten thousand dollars, an equal amount with Mr. Denson, and that they were to have an equal interest in this contract.

The Court: The objection will be overruled. You may answer the question.

(Question read.)

A. No.

Q. As I understand your testimony, Mrs. Mapes, if I can boil it down, the fact that a lease was not

(Testimony of Mrs. Irene Gladys Mapes.)

signed between you and your son and Mr. Denson was because, first, you had not persuaded Mr. Denson to confer with you leading up to the execution of the lease, and secondly that you desired your son [631] and Mr. Denson to get together on some signed agreement to determine how much each would share in the lease. Now without asking you many many questions, have I stated the substance of your testimony fairly?

Mr. Cooke: I would like to have that question read. It is pretty long. It may be I want to make an objection.

(Question read.)

Mr. Cooke: Our objection to the question is, it is what counsel understands of the testimony. I know that is done more or less by counsel and think I do it more or less myself, but I am satisfied it is contrary to examination to ask a witness what an attorney understands, and that is what this is here. Mrs. Mapes can't testify to what counsel understands.

The Court: I think it is reframing the witness's testimony, what has been testified on that in one question. The objection is overruled. Answer the question, if Mrs. Mapes understands the question.

Mr. Platt: I will try to clarify it, your Honor.

The Court: We will take a recess until tomorrow morning at 10:00 o'clock. Recess in this case until 10:30.

(Recess taken at 4:10 p.m.)

(Testimony of Mrs. Irene Gladys Mapes.)

Thursday, December 12, 1946, 10:30 a.m.

Appearances as at previous sessions.

Mrs. Mapes resumed the witness stand on further examination by Mr. Platt.

Mr. Platt: As I recall, your Honor, I had asked Mrs. Mapes a question just before we adjourned.

(Question read.)

The Court: Do you still feel——

Q. Well, Mrs. Mapes, attempting to shorten and clarify the question, do I understand that you were always ready and willing to sign a lease if and when Mr. Denson and Charles could get together on the proportion which you believe they were to share?

A. Not to that sense, Mr. Platt. I thought it was necessary for them to get together on an agreement so it would be set up in a businesslike way and that there wouldn't be any squabbling after they started. The hotel operation was started. I don't think I said in any part of my testimony——

Q. Well then am I to understand that you were always ready and willing to sign a lease, providing your son Charles and Mr. Denson could get together in a business way?

A. That was never definitely settled. It was understood they would agree upon their business association and from there would go into agreement on the lease. That was understood before we signed this paper. [633]

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Platt: Well, I ask the part of the answer that it was understood be stricken.

The Court: Doesn't the question call for understanding?

(Question read.)

The Court: Motion will be granted. It may be stricken.

(Question read.)

A. Yes, I would want to say that I always understood that we were to agree on this agreement, then draw up a lease.

Q. And then your testimony is if they could get together in a business way you were ready to sign the lease and that was the only thing you were waiting for?

A. No. I thought they should both get together. It was my understanding that we would agree, that I was to understand what the management would be of the lease I would have to draw, who was going to be manager, how it was going to be set up. If I can explain at this time, that this preliminary agreement was purely Mr. Denson's idea. I signed that agreement with the thought that provided terms, conditions and details could be mutually agreed upon and on its face I thought the agreement was a preliminary agreement, it was a preliminary agreement. To my notion all of this was preliminary, to get together to really agree to agree.

Q. Well, did you also understand that in the

(Testimony of Mrs. Irene Gladys Mapes.)

event Mr. Denson [634] did not comply with the terms and conditions and covenants of the preliminary agreement, as you call it, that you keep the ten thousand dollars?

A. No, I wouldn't. If for any reason we couldn't agree, I would never keep his ten thousand dollars. I didn't know as he was to put up ten thousand dollars, Mr. Platt.

Q. You didn't even know that?

A. No. There was \$20,000 to be deposited. Who was to put it up was never decided on. I would never keep any one's money unlawfully or in any way.

Q. At least you did keep his ten thousand dollars.

A. Has he ever asked me for it please?

Q. I am asking you the question.

A. I have it.

Q. And he put it up on October 4th and you have kept it since? A. Yes.

Q. I want to clear up, if I can, another little matter. I understood you to testify that Mr. Denson was in Reno some time during the latter part of December, 1945, and upon that occasion you and he interviewed Mr. Hopper with respect to the 12-foot strip. Aren't you mistaken as to the date, Mrs. Mapes? Isn't it a fact that you and Mr. Denson interviewed Mr. Hopper a month later, namely about the 25th of January, 1946?

A. I thought that was in September I said. I

(Testimony of Mrs. Irene Gladys Mapes.)

don't definitely [635] recall. I told you the letter I had received from Mr. Gock in connection with it was in December. I don't know that I clearly have the time or recollection in my mind.

Q. Well, to the best of your recollection, is it a fact or isn't it a fact that you and Mr. Denson interviewed Mr. Hopper the afternoon of January 25, 1946, with respect to your desire to have the City Council give you the 12-foot strip which you desired for hotel purposes?

A. I interviewed Mr. Hopper. I recall my interview with Mr. Hopper and what date I couldn't tell you that.

Q. You couldn't tell me?

A. No, I am sorry.

Q. Well, isn't it a further fact that after this interview with Mr. Hopper that you and Mr. Denson, at your instance and request, went to the University to see a painting?

Mr. Cooke: Objected to. It is wholly immaterial.

The Court: It seems to be immaterial, unless it is used for the purpose of refreshing her memory.

Mr. Platt: That is right.

The Court: Objection overruled.

A. I don't know. I know that we went. I couldn't say right now when I had that portrait painted. I would have to go back and check back. Those things are not in my mind.

Q. In any event, you recall that you took Mr. Denson up to the University for that purpose?

A. Yes.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. And it was while that portrait was being painted?

A. I wouldn't connect the two. I would like to stop there.

Q. But your answer is you do not know whether it was December or January that you went to interview Mr. Hopper?

A. No, I thought I said September. I didn't say December. I thought I said September. I really thought it was earlier. I didn't say December, I am certain. If I did, I was mistaken because I thought I said September.

Q. Well, do you know whether Mr. Denson was here in September, 1945? A. Yes.

Q. Well, that was before the signing of the contract, wasn't it? A. Yes.

Q. And you are certain, aren't you at least, that Mr. Denson didn't interview Mr. Hopper until after the contract was signed?

A. I was thinking it was September. We have had so many interviews on that 12-foot strip and I have had so many people try to help me to get that 12-foot strip. I think it was in regard to Mr. Gock's letter. I don't recall definitely and if I misunderstood the dates, I don't think it was intentional on my part. I am most certain I said September and if it was misunderstood, that was my thought. It was before the signing [637] of this agreement.

Q. Isn't it a fact, Mrs. Mapes, that Mr. Denson visited you at your home on the 25th of January, 1946, and that you discussed with him the question

(Testimony of Mrs. Irene Gladys Mapes.)

of the 12-foot strip and he told you that he was going to see Mr. Hopper and you requested that you go along and Mr. Denson then said, "No, I would like to see Mr. Hopper alone first" and then he came back to your home and then in the afternoon you and he went to interview Mr. Hopper, and that was the afternoon of January 25, 1946?

Mr. Cooke: Objected to as immaterial.

The Court: Objection overruled.

Mr. Cooke: Does not prove any issue in the case.

The Court: You may answer the question.

A. No, it is not a fact.

Q. It is not a fact?

A. No, not those conditions, that he said he wanted to go on his own to see Mr. Hopper.

Mr. Platt: I think that is all, your Honor.

The Court: Any further questions, Mr. Cooke?

Examination

By Mr. Cooke:

Q. You answered counsel for the plaintiff on his examination just closed several questions about whether you were willing to sign a lease until your son and Mr. Denson had agreed upon something as between themselves. What lease did you have in mind? [638]

A. That we were to get together to see if we could agree upon a lease on the hotel.

Q. Did you ever discuss with Mr. Denson since September 24, 1945, the details and conditions and

(Testimony of Mrs. Irene Gladys Mapes.)

terms that should go into the lease, other than as set forth in the September 24th agreement?

A. No.

Q. Was the subject, for instance, of whether the lease, if it was made, was to be assignable, was that discussed?

A. Oh yes, that was a very important factor. Before this preliminary paper was signed that was why really Mr. Denson had come up to get together on this association agreement, business agreement, and it was understood at that time that, due to the fact and looking at things as things are, Mr. Denson being the older one of the two, that he would naturally pass upon conditions first.

Q. When and where was that discussion, Mrs. Mapes?

A. In our living room at home.

Q. And when?

A. That Sunday.

Q. What do you mean by "that Sunday"?

A. I would want to say the 23rd. That Saturday night, the 22nd it was, I believe, it was, if that is a Saturday night.

Q. The Saturday preceding the Monday when the meeting was held in my office and the paper was prepared, September 24th? [639]

A. Yes.

Mr. Platt: I submit, your Honor, my recollection is that that meeting in Mr. Cooke's office was held on Sunday.

A. This was another meeting I believe Mr. Cooke was speaking of.

Mr. Cooke: There was no meeting held in my office on Sunday in connection with this matter.

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Platt: You are referring to the meeting of September, 1945?

Mr. Cooke: Yes.

Mr. Platt: What date in September?

Mr. Cooke: 24th. That is on Monday.

Mr. Platt: I beg your Honor's pardon.

Q. Who was present when the matter was discussed as you stated?

A. Mr. Denson, my son Charles and myself.

Q. Who brought the subject up?

A. What subject?

Q. Who brought it up that Mr. Denson, being the older man and that you have some protection against some of his heirs coming into the lease?

A. My son.

Q. Do you recall what he said?

A. He said he thoroughly wanted it understood that this interest in this lease couldn't pass in case of his death. [640]

Q. Whose interest?

A. Mr. Denson's interest. That at that time it should not pass to the heirs.

Q. What heirs?

A. Mr. Denson's heirs. I think the reason my son said that he just didn't want any one in there connected with him.

Q. That isn't responsive. I asked you what was said?

A. I think he said that.

Q. You think he said that?

A. I know he said that.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. He didn't want strangers coming in?

A. Didn't want some strangers coming in.

Q. Do you remember what Mr. Denson said about that?

A. It was agreeable.

Q. What did he say?

A. That was all right.

Q. Were there any other details of the proposed lease different from what was discussed, that was mentioned at that meeting?

A. Yes, the percentages; what part Mr. Denson would have and what part my son would have.

Q. They went into the document that was drawn on the following Monday, the percentages?

A. No, the 30 per cent and 70 per cent.

Q. That was between your son and Mr. Denson?

A. Yes.

Q. I am talking about the lease arrangement between you and Mr. Denson. Was anything further discussed? You already told us about the agreement not being assignable.

Mr. Platt: I submit if the witness did not understand the question that she say so. Instead we have another different matter. The question is not responsive, I ask that it be stricken.

Q. I ask you the question again——

Mr. Platt (Interrupting): I make the motion.

The Court: Motion denied.

(Question read.)

A. There wasn't a discussion on drawing the lease that night at all, Mr. Cooke.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. But this one subject you have mentioned about not being transferable or assignable, did that relate to the lease or between your son and Mr. Denson?

A. Between my son and Mr. Denson. Mr. Denson came up to my home to get together with Charles so we could get together on agreement of the association. That was the intent and purpose of his coming here.

Q. So when you talk about the discussion as to the arrangement or agreement not being assignable or transferable in case of the death of Mr. Denson, an older man, etc., you had reference to a partnership agreement between him and your son? [642]

A. Yes.

Q. And not to the lease?

A. No, that was not discussed.

Q. Then it is correct to say that the details of the proposed lease, outside of what was stated upon the face of the document that was prepared the following Monday, were not discussed by you and Mr. Denson at any time? A. No.

Q. Counsel asked you about the ten thousand dollars that had been paid. Have you taken any steps to tender that back or offer the tender of it back prior to this suit being commenced?

A. Prior to the suit—yes, I offered it back April 10th. That is prior to this suit.

Q. You didn't do it personally?

A. No, through my attorney.

Q. You caused it to be done?

(Testimony of Mrs. Irene Gladys Mapes.)

A. Yes, I talked with Charles and he said he didn't want to go on with the lease and I said, I told you we should return that ten thousand dollars to Mr. Denson.

Q. You refer to this 12-foot strip here and the city giving you that strip. That wasn't any gift from the city that was contemplated? You use the term "gift."

A. That is a long story, but I would like to say that the city led me to believe that we could purchase that 12-foot strip. [643]

Q. I don't care about that. You were on a deal with the city where you were trying to buy it for a good round price, isn't that correct?

A. A good price. I think we have the same type as you had at Grey Reid Wright's.

Q. Counsel asked you a number of questions about September and December incident of Mr. Denson being here and so on. I understood you yesterday to testify that Mr. Denson was not here at all between September 24, 1945 and January 25, 1946. Is that right or not?

A. Yes, I asked his Honor if I could correct a mistake I had made and he permitted me to do so. I did say the day before I thought he was here in December.

The Court: I remember your asking that permission.

Q. What correction do you want to make?

A. I think in my first day's testimony I thought

(Testimony of Mrs. Irene Gladys Mapes.)

Mr. Denson was here in the latter part of November or the first part of December.

Q. That is what you want to correct?

A. I wanted it corrected.

Q. What is correct?

A. Mr. Denson was not here until January.

Q. So it is a fact then that he was not here from September 24th down to January 25th, the following January, is that right? [644]

A. Yes.

Q. Was it a fact that Mr. Denson wanted to see Mr. Hopper first on this occasion when he planned to go down there? Was there anything said by Mr. Denson at that time about his wanting to see Mr. Hopper before you went in?

A. No. I think I explained to Mr. Denson that I understood the difficulty, one part of the difficulty, getting this 12-foot strip was the objection of the adjoining property owner——

Q. (Interrupting): But what I wanted to know, Mrs. Mapes, is what was said between you and Mr. Denson preparatory to going to Mr. Hopper?

A. I think I asked him to go with me, as I recall.

Q. Any reason stated by you why you wanted him to go?

A. I asked him to go that he might express Mr. Gock's wishes in the matter.

Q. What did he say to that?

A. He was agreeable.

(Testimony of Mrs. Irene Gladys Mapes.)

Q. And you went together?

A. Yes, went together.

Q. And had the conference with Mr. Hopper?

A. Had the conference.

Q. That conference, I think you told us now, was in January.

A. It has definitely been put in January. I wouldn't mean to swear to anything.

Q. What is your best recollection about it? [645]

A. I don't know. I would have to have somebody else tell you about that.

Q. It might be January or September?

A. It might be any date. I would have to be told.

Q. You have no way of fixing it?

A. I have no way of fixing it.

Mr. Cooke: That is all.

Mr. Platt: We have no further questions, your Honor.

CHARLES W. MAPES, JR.

one of the defendants, called as as adverse witness, being first duly sworn, testified as follows:

Cross-Examination

By Mr. Platt:

Q. Mr. Mapes, you are Charles W. Mapes, Jr., one of the defendants? A. I am.

Q. You are the son of Mrs. Charles W. Mapes, another defendant? A. Yes sir.

(Testimony of Charles W. Mapes, Jr.)

Q. And the brother of Gloria Mapes, another defendant? A. Yes sir.

Q. Are you acquainted with Peter G. Denson, the plaintiff in this action? A. Yes, I am.

Q. Do you recall when you first met him?

A. I believe I met Mr. Denson some time in the fall of 1944.

Q. Where did you meet him?

A. At my home in Reno.

Q. Do you remember who were present at that meeting?

A. I think my mother and Mr. Denson and myself.

Q. Do you know the purpose or object of his visit?

A. No. I was in the navy at that time and I had a week-end leave. I just came off the *plan* and met Mr. Denson, merely a social visit. He kidded me about being in the navy and mentioned [647] he had been in the army himself in World War I. It was a friendly visit at that time is all I recall.

Q. Do you recall when you met him again?

A. I think I met Mr. Denson the next time at the Hotel Sir Francis Drake in San Francisco.

Q. About when was that?

A. That was on V-J Day.

Q. And where in the Sir Francis Drake did you meet him?

A. I think I met him first in the lobby of the

(Testimony of Charles W. Mapes, Jr.)

hotel and later on either at his room or our room, later on that night.

Q. Do you recall who were present at that meeting?

A. It wouldn't be any meeting. It was just a get together. I think there were Mr. Denson, Mrs. Denson, mother, Gloria, and myself.

Q. Was there anything done or discussed in a business way during that meeting?

A. Not that evening. It was V-J Day and the army and navy were there in San Francisco. Everybody was happy that the war was over; more or less expressing our happiness that the war was over.

Q. Well, you were socializing on that occasion?

A. Yes, you might call it that.

Q. And did you meet Mr. Denson the next day in San Francisco?

A. No, I was confined to my base after the celebration in San Francisco. [648]

Q. When did you meet him again?

A. I believe it was a short time after.

Q. When is that?

A. I didn't meet him during the day and I believe it was a few hours that night, the following day, the 15th or 16th, the day after V-J Day.

Q. And upon the following day, the 15th or 16th, who were present at that meeting?

A. I met with Mr. Denson alone, just the two of us, in the mezzanine.

Q. Where did you meet with him?

(Testimony of Charles W. Mapes, Jr.)

A. The mezzanine of the Sir Francis Drake Hotel.

Q. The entrance? A. The mezzanine.

Q. What was the purpose of that meeting?

A. Well, Mr. Denson called me aside and the purpose, I guess, was for the two of us to get better acquainted.

Q. Just a minute. Was that meeting previously arranged by either one of you?

A. No, I don't believe it was.

Q. Was it just an incidental meeting?

A. I wouldn't say it was incidental, but I came there to the hotel and we met.

Q. Well, was it arranged between you and he that you were to meet at the hotel? [649]

A. There was no definite date set.

Q. You just happened to meet accidentally?

A. It wasn't accidental. I was at the hotel with my family and I knew Mr. Denson was there.

Q. You knew he was there?

A. I had met him the night before, yes.

Q. Where did you meet with him alone, what part of the hotel?

A. The mezzanine of the Sir Francis Drake.

Q. Did you discuss any business matters or hotel matters upon that meeting?

A. Yes, I think we did. Mr. Denson said that he——

Mr. Cooke: Just answer the question, Mr. Mapes. You said you did, that is enough.

A. Yes.

(Testimony of Charles W. Mapes, Jr.)

Q. What was said by both of you?

Mr. Cooke: Objected to on the grounds it is immaterial, tends to vary the terms of the written agreement. Whatever was said between he and Mr. Denson can not be binding upon Mrs. Mapes, who was the first party in the agreement of September 24, 1945, and that this was prior to the time of that agreement and whatever was said or done from any standpoint would be precluded and excluded by the rules of the agreement itself, which would conclusively deem to include all preliminary negotiations by any of the parties who had any right to make any negotiations. [650]

The Court: Mr. Cooke, I think your statement of law is correct, but the thought that has influenced me in overruling that same objection so many times is that I am not certain about the principle, but in an equity proceeding all these matters might, some of them at least, bear upon the different principles, without which the Court would or would not decree specific performance in the case. For instance, that equitable or legal discretion the Court has, and whether or not the remedy should be damages or adequate legal remedy apart wholly from equitable matters, that might be considered by the Court. I agree with you that negotiations are generally merged in an executed written document. And that is my idea in admitting this evidence. The objection will be overruled.

Mr. Cooke: On what your Honor just stated, if I may be permitted, I would like to add that in any

(Testimony of Charles W. Mapes, Jr.)
event the rule of principle indicated by your Honor would not apply to proceedings and things said and done prior to the making of the written agreement. That might possibly be admissible after that time if there are uncertainties in the agreement that required clarifying.

The Court: I am not so sure of my view I take here, [651] but the thought I have is that when we come to decide the case and we have the benefit of citation of legal authorities by counsel on each side and the Court then would take into consideration only those matters that the Court thought were legally before the Court, regardless of any ruling that has been made here. I certainly would not decide a case on evidence which I, after study, determined was clearly inadmissible. I wouldn't do that; I would disregard it; so the objection will be overruled. I just want to explain the thought I have in mind. I do not dispute but what your statement of law contained in that objection is perhaps good law, but there is a question in my mind as to whether or not some of those matters should be taken into consideration in an equity proposition such as this. Objection will be overruled.

(Last question and answer read.)

Q. Well, the question was, did you discuss any business or hotel matters upon that meeting, that occasion? A. Yes.

Q. What was said by both of you?

A. Mr. Denson told me he was very anxious to

(Testimony of Charles W. Mapes, Jr.)

have a part in [652] the hotel. I asked Mr. Denson what part. He said, "Charles, I would like to have a third interest in the hotel with you." I said, "Well, Mr. Denson, I will think it over." He also told me of some of his experience in California, what he had done before I had met him. I don't know as I can remember what he said.

Q. He said he would like to have a third interest in the hotel? A. That's right.

Q. And aside from telling you his experience as a hotel man, was there anything else said by either one of you?

A. He mentioned he was very desirous of coming to Reno, that he had a hotel in Visalia and that he was anxious to get out of Visalia and wanted to come to Reno.

Q. Well, if you recall, did you meet him again?

A. The next time I met Mr. Denson was about 10 days or two weeks after the meeting at the Sir Francis Drake, at the Fielding Hotel in San Francisco?

Q. The Fielding Hotel?

A. The Fielding Hotel.

Q. Do you remember about the date of that meeting?

A. I couldn't testify definitely to the date. I know we stayed at the hotel but I think it was about two weeks after the meeting at the Sir Francis Drake.

Q. Who were present at that meeting? [653]

(Testimony of Charles W. Mapes, Jr.)

A. Mr. Slocum and Mr. Moorehead, Mr. Denson, mother and myself.

Q. What was said and done at that meeting?

A. Well, it was a meeting with Mr. Slocum and Mr. Moorehead, going over the proposed plans, the preliminary plans, they were making up for us on the hotel we were contemplating building.

Q. Do you know how Mr. Denson happened to be there on that occasion?

A. I don't know definitely. I didn't ask him why he was there.

Q. Did you ask him? A. No sir.

Q. Did you know he was going to be present?

A. No, I don't believe I did. I knew mother and Mr. Moorehead and Mr. Slocum were going to be there. There was no objection to Mr. Denson being there.

Q. But you are certain he was there?

A. I know he was there.

Q. Were plans of the hotel submitted at that time by Mr. Moorehead or Mr. Slocum or anybody else?

A. Mr. Moorehead and Mr. Slocum had sketch plans which they were showing to mother. In other words, they were trying to convince mother and the family that they would produce the ideas we wanted in the hotel in the plans that they were preparing. [654]

Q. Was there any discussion about plans?

A. There were quite a few things that mother

(Testimony of Charles W. Mapes, Jr.)

objected to. They had a building that was more or less pyramid shape and mother said she didn't like it, didn't want a building of that shape, and she didn't like the way they set the windows in and had too much ornamentation on top and there were several details mother definitely didn't want. She was sitting down with Mr. Slocum who was handling more the exterior part, and telling him definitely what she wanted.

Q. Did Mr. Denson participate in that conversation?

Mr. Cooke: Objected to on the grounds stated in the main objection.

The Court: Same ruling. Answer the question.

A. I believe he said something. I believe he was more or less explaining mother's view to Mr. Moorehead on the changes mother had in the plans.

Q. Well, in order to get at the facts, did he actively participate in discussion of the plans?

Mr. Cooke: Same objection to all this.

The Court: Same ruling.

A. Yes, he did speak at the meeting, yes.

Q. Well, did you have occasion to meet Mr. Denson after that time?

A. This meeting you were asking me about I think happend in the morning and then we went to lunch. I think that afternoon [655] Mr. Denson called me aside on the mezzanine and said, "Charles, have you thought any more about the proposition of you and I going in together on the hotel?" I said, "Yes, I have, Mr. Denson. I would only be

(Testimony of Charles W. Mapes, Jr.)

interested in a 30-70 per cent basis between you and I." Mr. Denson said, "Well, that is so close that is agreeable to me."

Q. Did you and Mr. Denson meet with anybody else that afternoon?

A. No, the discussions I had with Mr. Denson that afternoon were between Mr. Denson and myself.

Q. When, if at all, did you meet him again?

A. I think I met Mr. Denson the next time in Reno around September 22, 1945.

Q. Where did you meet him?

A. I know definitely I met him at my home.

Q. Who were present when you met him?

A. Mother was there and my sister Gloria, Mr. Denson and myself.

Q. How long did Mr. Denson stay?

A. Mr. Denson was our house guest and stayed three days, I believe, at our home.

Q. Did I understand you to say that was in September?

A. Around September 22, 1945, yes.

Q. And during those three days was there any business or hotel discussion? [656]

A. Yes. Mr. Denson and I discussed before mother the proposed agreement that we tentatively agreed on at the Fielding Hotel. Mr. Denson said it was agreeable that he take 30 per cent of the hotel and I take 70 per cent of the hotel. I mentioned to Mr. Denson that he being an older man with a shorter life expectancy than probably myself,

(Testimony of Charles W. Mapes, Jr.)

that I had the right, in case anything happend to him, to buy out his interest in the hotel, so I wouldn't have to do business with some outsider, Mr. Denson having no immediate heirs, only his wife.

Q. Well, what I would like to get at, of course, is what you said and what Mr. Denson said and what Mrs. Mapes said and what Gloria said. I would like to get the conversation.

A. My sister Gloria did not participate, as I recall, in any of these discussions. She was going to school and she was in and out. I don't think she was a party to any discussions there.

Q. Well, were there discussions there when you were not present?

A. There were no meetings held where I wasn't present at that time that I can recall.

Q. Will you state positively that Mr. Denson and your mother and other people never discussed hotel or business matters unless you were present?

A. I don't understand your question, Mr. Platt.

Q. Will you state, of your own knowledge, that Mr. Denson and [657] your mother or anybody else did not discuss hotel business or business matters while you were absent, not present?

A. How would I know? That answer is obvious.

Q. You wouldn't know, would you?

A. No.

Q. Therefore your statement to the effect you were always present has to be qualified?

(Testimony of Charles W. Mapes, Jr.)

A. The only time we had a meeting was when Mr. Denson, mother and myself were present.

Q. I will get back to my question. Will you state, of your own knowledge, that Mr. Denson and your mother never had a meeting unless you were present?

Mr. Cooke: Already answered.

A. Not to my knowledge, no. In fact, I am very definite there was no meeting that I wasn't present at that time.

Q. I am not talking about that time. I am talking about any time after you began discussions with reference to the hotel.

A. It is a broad question, Mr. Platt; I don't know.

Mr. Platt: The question is broad, with your Honor's indulgence, because the answer was broad.

(Question read.)

A. Well, Mr. Platt, you were talking about this meeting around September 22nd, 23rd, and 24th at our home the three days Mr. Denson was there. That was the only time that I recall or definitely know that Mr. Denson and my mother talked [658] when they weren't in my presence. That is what I thought I was answering you.

Q. There is no time that you can recall that your mother and Mr. Denson had an interview concerning hotel matters without your presence?

A. None that I know of.

Q. Well, how frequently during the 22nd or

(Testimony of Charles W. Mapes, Jr.)

23rd, and did you say the 24th of September, 1945, did you have discussion about the hotel?

A. I believe two days out of the three, I would say.

Q. Was anything else discussed except what you testified to as to the proportion that you were to get?

A. Yes, Mr. Denson had an agreement which he showed. I think there were three sets of it, of the preliminary paper which he wanted mother and himself and myself to sign.

Q. Well, did he ask you to sign it?

A. He asked us to look it over and to sign it, yes.

Q. Well, did you look it over?

A. Yes, we discussed it.

Q. How long did you discuss it?

A. Oh, I would say two or three hours.

Q. And you and your mother and Mr. Denson participated in this discussion? A. Yes.

Q. During the discussion the proposed agreement that Mr. [659] Denson presented was before you?

A. We had seen copies of it, yes.

Q. And you discussed it in every detail, did you?

A. I wouldn't say that we discussed it in every detail. Lots of times we got off the subject and back on. I don't know as we definitely discussed it for a period of two or three hours, but at any rate——

(Testimony of Charles W. Mapes, Jr.)

Q. (Interrupting) But you thoroughly understood the provisions?

A. I wouldn't say thoroughly understood the provisions.

Q. Not thoroughly?

A. That is obvious in view of what has happened.

Q. Well, did you make any investigation prior to that time with respect to rental conditions in an agreement of this sort?

A. No, I didn't. Mr. Denson had told me previously that he was going to draw up something that would be fair to mother and to all of us. It would be a preliminary paper, not in any way be binding on any party, and the paper which he brought up at this meeting was supposed to represent that document which he said he was going to prepare previously.

Q. And you are certain that he made the statement that the agreement would not be binding upon any party? A. Absolutely.

Q. When and where did he make that statement?

A. Mr. Denson made that statement at our home and also in our [660] attorney's office, I believe, on the 24th and also on October 4th when we signed the agreement and that all this was a preliminary paper, had no intentions of being binding on the parties. It was something to get us all started, to get this project going.

(Testimony of Charles W. Mapes, Jr.)

Q. Did he make that statement in the presence of Mr. Cooke?

A. I recall that he made that statement in Mr. Cooke's office on one of those occasions.

Q. What occasion?

A. It was either on the 24th or October 4th, I wouldn't know definitely.

Q. But it was on one of those occasions?

A. The best I can recall, yes.

Q. It has been suggested that I ask you what you mean in your answer that it was only to get you started? What did you mean by that?

A. Mr. Denson was very anxious to have something to show. In fact, he continually pressed mother to sign this agreement. He was continually after her while he was staying at the house for her to sign this agreement. He wanted something to show.

Q. Didn't he tell you and your mother that he wanted something to show in order that he could assist her in obtaining a loan and exercise an influence? A. Absolutely not.

Q. Never said anything of that sort? [661]

A. No.

Q. Were you present upon any occasion when a loan was discussed?

A. Not with Mr. Denson, no.

Q. You never heard any discussion between Mr. Denson and your mother about the question of a loan? A. No.

Q. I hand you Plaintiff's Exhibit "C", which

(Testimony of Charles W. Mapes, Jr.)
is the agreement in evidence here, dated September 24, 1945, and will ask you if you signed that agreement? A. That is my signature.

Q. When did you sign it?

A. I believe on October 4th, around October 4th.

Q. And at what place was it signed?

A. Mr. Cooke's office, our attorney's office.

Q. Was it signed in the presence of your attorney? A. Yes, I believe so.

Q. And at that time was there any check or money paid to your mother?

A. Mr. Denson presented a check for ten thousand dollars.

Q. You saw the check?

A. I don't recall seeing it but I knew of it.

Q. You know that he did?

A. I know that he did, yes.

Q. Well, did you pay anything? [662]

A. No, I didn't.

Q. Have you since paid anything?

A. It hasn't been demanded of me, so I haven't.

Q. Your mother has not demanded it of you?

A. Neither my mother nor Mr. Denson. There have been no demands made on me.

Q. It is certain your mother never demanded it?

A. I am not certain, no. She may have asked, but there was no demand. If there had been a demand, I was ready, willing and able to put up my share at any time up to April 1st.

Q. And your mother knew that?

(Testimony of Charles W. Mapes, Jr.)

A. The money was always available and could be obtained on short notice.

Q. Was there any understanding between you and Mr. Denson and your mother that Mr. Denson was to put up any more than ten thousand dollars or any less?

A. There was no understanding between Mr. Denson and myself at all what any of us was to put up. Mr. Denson, of his own volition, wrote out a check for ten thousand dollars, without my knowledge, and presented to mother.

Q. Without your knowledge?

A. Without my previous knowledge of the fact he would put up any definite amount. We never had any agreement as to what he was to put up or I was to put up.

Q. I show you this agreement in evidence here and call your [663] attention to Section 1 of it, which reads: In consideration of the premises and for other valuable and sufficient consideration, present and received, the receipt whereof is hereby mutually acknowledged by the parties, that contemporaneously with the execution and delivery hereof the second parties shall deposit with the first party the sum of \$20,000 in cash as a guaranty of their good faith and by way of inducement for first party to enter into this agreement." What do you understand that to mean?

A. Mr. Denson and I were to pay a total of \$20,000.

(Testimony of Charles W. Mapes, Jr.)

Q. How much of that was Mr. Denson to put up and how much were you to put up?

Mr. Cooke: We object to that. The paper must be allowed to speak for itself.

The Court: Objection will be overruled.

A. I never discussed it with Mr. Denson.

Q. I am asking about your understanding of it. I am not asking about discussion. You have the agreement, you signed the agreement, you read the agreement, now according to your understanding, how much was Mr. Denson to put up and how much were you to put up as a preliminary payment?

A. I didn't go into the legality of it at that time.

Q. I am not asking about the legality of it. I am asking you to answer that question.

A. It was my understanding that our total payments were to [664] equal \$20,000.

Q. Well, how much of that were you to put up, according to your understanding, and how much was Mr. Denson to put up?

A. That I would say between the two of us we would have to agree. I don't think it would be right for me to give my opinion any more than anybody until we agreed on it. We never agreed on any amount. Mr. Denson just wrote out a check for ten thousand dollars, is the first time I knew of it.

Q. Well, was it your understanding that you didn't have to put up anything.

A. It was not my understanding.

Q. Well, what was your understanding?

(Testimony of Charles W. Mapes, Jr.)

A. As I repeated before, that Mr. Denson and I were to put up the total of \$20,000.

Q. Well originally how much, according to your understanding, were you to put up and how much was Mr. Denson to put up?

A. I would say Mr. Denson and I would have to agree on it beforehand.

Q. Wasn't it agreed and understood beforehand, according to that agreement, that you should each put up ten thousand dollars?

A. It was not definitely, no.

Q. Well, were you instructed by your lawyer what the importance of signing such an agreement like that meant?

A. It was the intention of this agreement that it was just a [665] preliminary agreement. Mr. Denson said it several times, "Charles, whatever your mother, Mrs. Mapes, wants we are going to be fair and reasonable to her at all times and I want you to feel that we are working for your mother's interests and this paper is something to get us started and it is not intended to be binding on any of us."

Q. Do you know why the paper was signed?

A. It was signed with that intention. That is the reason I signed it. After all we thought we could get along harmoniously. It was sort of a big enterprise for all of us and Mr. Denson, at practically every meeting I had with him privately expressed the fact, "Charles, you and I are going to

(Testimony of Charles W. Mapes, Jr.)

bend over backwards to treat Mrs. Mapes, your mother, right.”

Q. And he has repeatedly told you that, hasn't he?

A. He had up to that time, yes.

Q. And repeatedly since, hasn't he?

A. Until we—previous meetings, yes, then he denied all that; up until the time he denied it.

Q. Denied what?

A. Well, I think it was around April 1st.

Q. In 1946? A. Yes.

Q. After you and he had had a conversation at Mr. Moorehead's office?

A. We had a conversation at Mr. Moorehead's office, yes. [666]

Mr. Platt: I am coming back to that, your Honor, but I want to finish up with this exhibit that we are on.

Q. Had you discussed this agreement with your attorney before you signed it?

A. I don't recall. I was in the navy at that time and I know I only came up on weekends.

Q. You mean to say you may have?

A. I may have and I may not have. I don't definitely recall.

Q. I call your attention to that part of the agreement which provides that you and Mr. Denson are to suitably furnish the hotel. A. Yes.

Q. Did you understand that?

(Testimony of Charles W. Mapes, Jr.)

A. That we were to provide the furnishings for the hotel?

Q. Yes. A. Yes.

Q. What was your understanding as to how much Mr. Denson was to contribute toward the furnishing of the hotel and how much were you to contribute?

A. That I was to furnish 70 per cent and Mr. Denson 30 per cent. However, I could never get Mr. Denson definitely together and never definitely decide. I do not think that was ever definitely discussed between Mr. Denson and I as to what amount of money he wanted us to put up.

Q. Is there anything in that agreement that indicates liability [667] for 70 per cent and 30 per cent proportion?

Mr. Cooke: Objected to; the agreement shows for itself.

The Court: I think the agreement has to show for itself. Objection is sustained.

Q. I show you some initials on the margin of page 4 of this agreement. Do your initials appear there? A. Yes.

Q. When did you initial it?

A. I believe that was October 4th, around October 4th.

Q. I call your attention to paragraph 5 of this agreement and I will ask you if it was your understanding that the gross receipts from various departments of the hotel were to be included in the

(Testimony of Charles W. Mapes, Jr.)

lease in accordance with the provisions of that agreement?

Mr. Cooke: Objected to as irrelevant and immaterial as to his understanding as to that. The document controls the understanding.

The Court: Objection overruled. Answer the question.

A. It was my understanding that he would always be right and fair with mother. If these percentages would work a hardship on her that Mr. Denson and I would make it right and reasonable with mother. After all, when we made up this agreement there wasn't any building built, there was no fixed contract, there was nothing to determine the cost or her investment and [668] it wasn't considered in my opinion fair to tie anything definitely down until we definitely knew the cost of the building. Mr. Denson said that he would always be fair and reasonable to mother.

Q. Well, he always has been, hasn't he?

Mr. Cooke: Objected to as irrelevant and immaterial.

The Court: That is a matter for the Court to determine, one of the matters. Objection sustained.

Q. And he repeatedly said that, didn't he?

A. He said that while we were in the process of negotiations.

Q. I call your attention to what purports to be a letter written by you on November 20th to Mr. Denson, addressed in an envelope to Mr. P. G.

(Testimony of Charles W. Mapes, Jr.)

Denson, Hotel Johnson, Visalia, California, and ask you if you wrote him that letter?

A. This is my letter, yes.

Mr. Platt: In order to keep the record straight, your Honor, that letter is Plaintiff's Exhibit "H."

The Court: The letter just handed the witness, or Exhibit "H," is already admitted in evidence, is that correct?

Mr. Platt: Yes, your Honor.

Q. In the beginning of this letter you said: "Thought I would drop you a short note and bring you up to date on what has been happening lately." What do you mean by that, "What [669] was happening lately," with respect to your hotel project?

A. I haven't seen that letter since I wrote it, Mr. Platt, I wouldn't know.

Q. I hand the letter to you and ask you to look at it while I ask the question.

A. I don't think anything particular happened lately; what happened in Reno.

Q. To what did that refer?

A. I don't know what happened—what I put in the rest of the letter, I don't know.

Q. Weren't you trying to keep Mr. Denson up to date with respect to the progress being made of the hotel?

A. Yes, I probably did give him the information about the hotel. No reason why I shouldn't at that time.

Q. Well, you have also stated in this letter: "We had a long hall leading to the lobby that we asked

(Testimony of Charles W. Mapes, Jr.)

him to change." Whom do you mean by "him"?

A. Our architect, Mr. Slocum.

Q. "We asked him to change that and bring the lobby closer to Virginia, hence shortening two of the stores, but I think you will agree that it is most necessary. Also the two entrances to the garage have been consolidated to one under the present dining room." Now those references were all to the hotel, were they not? A. Yes. [670]

Q. Then you said: "These are the biggest changes and when we get the plans I would like to have your reaction on it." Why were you interested in his reaction?

A. I don't recall what my ideas were at that time.

Q. As a matter of fact, you were leaning upon Mr. Denson, leaning upon his experience, weren't you, upon his advice?

A. No, we had a very competent engineer, we had a superintendent who had built twenty buildings bigger than the one now building, had an architect, very skilled, mechanical engineer, another assistant architect. When we wanted any advice all of these people were skilled in hotel buildings, that was their specialty. It is natural that we would look to those people.

Q. Hadn't you solicited Mr. Denson's counsel and advice on many occasions?

A. I don't think I solicited his advice at any time. Most of the meetings I had with Mr. Denson

(Testimony of Charles W. Mapes, Jr.)

were more or less bringing him up to date, what we had already done with the hotel.

Q. Why were you trying to bring him up to date?

A. I thought he should know. He had a definite interest in what was going on in the hotel.

Q. He had a definite interest?

A. He was interested in the hotel.

Q. Did you always regard the fact that he had a definite interest?

A. That he and I, after the hotel were built, were to be associated [671] in the running of it, yes.

Q. Well, will you tell me why you stated in this letter that you would like to have his reaction on the changes that you were contemplating?

Mr. Cooke: We submit he has already answered the question.

The Court: Objection overruled.

A. I don't recall what my reasons were at that time, any more than I ask you for a reaction, I guess.

Q. That is your answer, is it, that you had the same reason for soliciting Mr. Denson's reaction to the improvements you were suggesting on the hotel, or changes, that you would have to ask me, a perfect stranger to the progress, is that your answer?

A. I didn't mean it that way, no.

Q. Well, how did you mean it?

A. I meant I wanted to get his reaction.

Q. Why did you want to get it?

A. It is so long ago I don't recall.

(Testimony of Charles W. Mapes, Jr.)

The Court: We will take our noon recess.

Afternoon Sessession, December 12, 1946, 2:00 p.m.

Appearances same as at previous session.

Charles W. Mapes, Jr., resumed the stand on further examination by Mr. Platt. [672]

Q. Calling your attention again, Mr. Mapes, to your letter to Mr. Denson of November 20th, I desire to read the following from it: "Mr. Burhans from Dohrmann's Hotel Supply came to the house. He is particularly anxious to help us on the layout of the kitchen before we start work." What did you mean by stating, "He is particularly anxious to help us * * *"?

A. I think Mr. Burhans had spoken to both mother and myself and mentioned something to the effect that we ought to have some sort of a kitchen lay-out or plan before laying out the plumbing and electrical work.

Q. Now when you stated in this letter that Mr. Burhans was anxious to help us on the lay-out of the kitchen, do you mean you and Mr. Denson, or do you mean you and your mother?

A. I think I mean my mother and myself.

Q. Although you were writing to Mr. Denson?

A. That's right.

Q. Well, didn't you understand that Mr. Denson was interested in the lay-out, furnishings?

A. Yes, it was contemplated that if we could get together on the lease of the hotel with mother that Mr. Denson and myself would be in operation of the hotel.

(Testimony of Charles W. Mapes, Jr.)

Q. Then you say: "I told him that it would be some time yet before we got the plans in shape to talk definitely on what we needed. That at that time I wanted you here to discuss it with him." To whom did you refer when you said, "I wanted you [673] here to discuss it with him"?

A. I referred to Mr. Denson.

Q. I hand you another letter attached to the same exhibit. Purportedly it is written by you on Monday, December 3rd, and will ask you if you wrote that letter?

A. That's my letter.

Q. The envelope bears the year 1945. Was that letter written by you on December 3, 1945?

A. I believe so.

Q. You start the letter this way: "Dear Mr. Denson: Glad to hear your voice over the phone and also to hear that your sale is progressing." When did he phone you? When did Mr. Denson phone you?

A. I can't state the date.

Q. Was it a short time before you wrote this letter?

A. I imagine it must have been.

Q. To what do you refer when you say, "and also to hear that your sale is progressing"?

A. Mr. Denson had told me that he intended to sell his lease that he had on his hotel in Visalia at practically our second meeting and he wasn't satisfied with Visalia, that he would like to get out of there and come to Reno. On previous occasions he told me that he was selling the hotel.

Q. Did he ever tell you that he was selling it at a sacrifice?

A. No. [674]

(Testimony of Charles W. Mapes, Jr.)

Q. You are satisfied of that?

A. Mr. Denson told me he had a very fine offer to sell the hotel and it was a good time to sell the hotel and he was going to take it on.

Q. But he did make it clear to you that he was selling his hotel in order to devote his activities to the Mapes Hotel?

A. No, Mr. Denson stated that if he didn't sell his hotel he still wanted to get away from Visalia, that he had a son-in-law he would put in the business to run the hotel, that he didn't want to stay in Visalia any longer.

Q. Where did he say that?

A. I don't definitely recall the meeting. Probably one of the meetings we had in San Francisco.

Q. Do you know about when?

A. I would say off-hand that it was either at the Sir Francis Drake Hotel or the Fielding Hotel.

Q. Was it before or after the contract was signed?

A. He told me this before the contract was signed.

Q. You also write in your letter: "They, the City Council, admit they can't afford to widen the street for the next eight years and this, together with the picture in the paper, might make them realize the damage they would be doing to the property of they 'bottle neck' us." To what picture in the paper do you refer?

A. The picture of the hotel. At that time I

(Testimony of Charles W. Mapes, Jr.)

think we had an [675] ad in the paper to the effect showing the hotel as the architect had drawn it up and it was a full page ad, calling the attention of the people of Reno what we thought the injustice was in the city not selling us the 12 feet.

Q. Is that the real reason why the article in the Journal and Gazette, which was introduced in evidence here, was printed?

A. No, this was another picture. It was a full page in the Gazette or Journal.

Q. Another picture?

A. Another picture of the hotel and stated our arguments and why we thought the city should sell us this 12-foot strip.

Q. Before I go on with the letter I want to call your attention to Plaintiff's Exhibit No. "I," which is two newspaper articles, one in the Nevada State Journal and the other in the Reno Evening Gazette, printed on December 2nd and 3rd, 1945, respectively, containing a purported picture of the proposed hotel building and quite a long narrative in the paper. Who gave that information to both of the papers? A. I did.

Q. Calling your attention to the Sunday morning, December 2nd article in the Nevada State Journal, there is stated in it the following: "When completed and furnished the hotel will be managed by Mapes and Peter G. Denson, who now owns and operates the Hotel Johnson at Visalia, California." Who gave that information to the paper? [676]

(Testimony of Charles W. Mapes, Jr.)

A. Mr. Denson had written me a letter giving me his background and this article is the wording of the reporter. It is the reporter's own words. I just gave the bare facts and he put it in the words.

Q. Have you a copy of the article you furnished to the newspapers?

A. I didn't furnish any article.

Q. You didn't furnish any article?

A. The only article I showed them was an article Mr. Denson wrote us about the history of his life.

Q. Well, how did it get the history of your life and your mother's and the family all included in it? Did Mr. Denson furnish them or did your mother?

A. I recited them.

Q. Well, is it true, as printed in this article, that when completed and furnished the hotel will be managed by Mapes and Peter G. Denson?

A. Well, those weren't my words, but I was trying to explain that the reporter wrote up the article and the first I saw the article was in the newspaper.

Q. It is true, isn't it?

A. It was contemplated, yes, that if we could get together on the lease.

Q. Then in the Reno Evening Gazette of December 3, 1945, there appears a similar statement: "The hotel is being built and [677] will be managed by the firm of Charles W. Mapes, Jr., and Peter G. Denson. Denson has been active in the hotel business for nearly thirty years and owns and operates the Johnson Hotel at Visalia, California." Who

(Testimony of Charles W. Mapes, Jr.)

gave that information to the Reno Evening Gazette?

A. I gave the information to the reporter and the reporter wrote up the story.

Q. You give quite an extended narrative in this letter as to the progress made of the hotel, which has already been read to the Court, but why did you give Mr. Denson the information contained in that letter?

Mr. Cooke: What letter are you referring to?

Mr. Platt: December 3, 1945.

Mr. Cooke: What exhibit number is that?

Mr. Platt: Well, it is a part of Exhibit "H."

Mr. Cooke: We object to it on the ground that it is irrelevant and immaterial; does not have any tendency to prove or disprove any waiver or any change in the written agreement; that nothing that he could say to the plaintiff, Mr. Denson, would be any evidence as against Mrs. Mapes, who is the party of the first part in that agreement, and therefore this would be immaterial for any purpose whatsoever as to why he asked Mr. Denson the questions proposed to be set forth in that letter.

The Court: Objection overruled. Answer the question.

(Question read.) [678]

A. Well, it was contemplated that if Mr. Denson and I could get together on the lease with mother that we would be associated in the operation of the hotel.

Q. Then further on in the letter you said: "You

(Testimony of Charles W. Mapes, Jr.)
might inquire on the pressed bricks, not Visalia, but around Sacramento or Stockton. If you have any leads, let Moorehead know, as I don't think we can count on the local supply here. Moorehead has two leads, one in Sacramento and one in Stockton." Why did you write that to Mr. Denson?

Mr. Cooke: Same objection.

The Court: Same ruling.

A. Well, at that time it looked like we were going to have trouble in getting the quantity of bricks that we needed. Mr. Denson was in that territory and I wrote to him as friend. I didn't need to make a trip there and I knew he often went to Sacramento and I thought on his way he could inquire. As it turned out we got all the bricks we wanted any way.

Q. Further on in the letter you say: "Since I have seen you last I have had several ideas that I would like to discuss with you after your deal is closed down there." You are referring to the sale of the Johnson Hotel? A. I believe I was.

Q. "One I might mention now. We can get a radio station on the building, either the mezzanine space or the roof." By referring "We can get a radio station," to whom do you refer? [679]

Mr. Cooke: Same objection and the further objection that this be hearsay as to the defendant Mrs. Mapes, who is party of the first part in the agreement of September 24, 1945; that this purports merely to be a conversation by way of letter between two parties, parties of the second part, as co-lessees

(Testimony of Charles W. Mapes, Jr.)

prospective and what they said to each other would be irrelevant and immaterial upon the question of the specific performance of the agreement as to Mrs. Mapes. It is not shown that Mr. Charles W. Mapes was her agent for the purpose of changing that agreement any more than Mr. Denson was. The further objection that this shows on its face that it is a discussion between these parties, with contemplation that they would give this lease some time or other and that it was their own private business, in which Mrs. Mapes has no interest, any more than she already stated she wanted to see them get together on some business basis before she signed up the lease, but this does not go to that.

The Court: Objection will be overruled. Answer the question.

(Question read.)

A. I believe it was myself and Mr. Denson.

Q. You state further in this letter as follows: "Mother is enclosing you separately the articles in the paper." Do you know whether she did or not?

A. I don't recall. [680]

Q. What were the other ideas that you wanted to discuss with Mr. Denson that you refer to in this letter, aside from the matter of the radio station?

Mr. Cooke: Same objection.

The Court: Same ruling.

A. Well, I wanted to get Mr. Denson so we could draw up some papers between ourselves and

(Testimony of Charles W. Mapes, Jr.)

how we were to operate this lease which we were to get from mother.

Q. Is that your answer?

A. Yes, I think that was one of the ideas.

Q. You say now that this is what you had in mind when you wrote that part of this letter?

A. As far as I can recall now.

Q. Do you recall any other ideas you had in mind at that time? A. No, I can't.

Q. You state further: "As for the information you wanted from me for the hotel magazines, it is enclosed." What information was that?

A. Mr. Denson drafted myself and mother a letter, stating that he wanted to get some information from me as to my background and just as I mentioned there.

Q. Did he write you such a letter?

A. He wrote it either to mother or myself, yes.

Q. Do you know whether that letter is available or not? [681] A. I think it is.

Q. Well, if it is will you try to produce it?

A. Yes.

Q. Did you later see the articles published in the hotel magazines, or some of them?

A. No. I did not see some of those later.

Q. Well, you have seen them?

A. Some of them I have never seen.

Q. Well, I call your attention to Plaintiff's Exhibit No. "J," which exhibit includes three magazines. I call your attention to the Hotel and Restaurant Reporter, is the title of one of the

(Testimony of Charles W. Mapes, Jr.)

magazines, and particularly to page 4 thereof, purportedly containing a cut of the proposed Mapes Hotel, and will ask you when, if at all, you saw it?

A. This is the first time I have seen it.

Q. You never have seen it before?

A. No sir.

Q. I call your attention to another magazine made a part of the exhibit, Keeler's Pacific Hotel and Restaurant Review, particularly to page 47, which likewise purports to contain a cut of the hotel, and ask you if and when you saw that?

A. This is the first time I have seen this also.

Q. I call your attention to another magazine, Western Hotel and Restaurant Reporter, included in Exhibit "J," containing an article on page 6, advertising for a name for the new Reno [682] Hotel. Have you ever seen that before?

A. I think some time late in the fall there was a representative of one of these magazines showed me a copy?

Q. This one?

A. Either this one or another one. I do not think I have seen that one.

Q. Well, I understood you to state definitely that you hadn't seen either one of the two previous magazines. Now what is your recollection, did you or didn't you?

A. I don't think I have seen any of these three magazines.

Q. Well, you stated you saw some magazine article. What magazine did you see?

(Testimony of Charles W. Mapes, Jr.)

A. I don't recall the name. I don't have a copy of it. It was just shown to me. That was much later than any of these articles. In fact, it must have been some time the late fall or early winter of 1945, 1946. It was some time in '46.

Q. That you saw these magazine articles?

A. There was a representative of a magazine company that showed me one of the articles, as I recall, a magazine company.

Q. Do you remember what time in 1946 you saw them? A. Not definitely, no.

Q. Well, approximately?

A. It must have been some time after—well, I would say it was some time this summer.

Q. In the summer of 1946? [683] A. Yes.

Mr. Cooke: Were you referring to the magazine or the representative that you saw?

A. Well, I met this representative.

Q. When, after the signing of this contract by you and the other parties to it, did you again see Mr. Denson?

A. After signing of the contract?

Q. Yes.

A. I think I saw Mr. Denson around December 28th.

Q. 1945? A. '45.

Q. Where did you see him?

A. I met Mr. Denson in Mr. Moorehead's office in Oakland, California.

Q. How did you happen to meet Mr. Denson in Mr. Moorehead's office on December 28, 1945?

(Testimony of Charles W. Mapes, Jr.)

A. I don't quite recall how we got together on that meeting. I know I went down to meet with my engineer and was on my way to go to the Rose Bowl game on January 1st. I don't recall whether I called Mr. Denson and asked him to meet me there or just how it was arranged.

Q. But you either called him or he called you, is that it?

A. Well, evidently the word got around some how.

Q. And do you remember about what time on December 28th you met in Mr. Moorehead's office?

A. I believe it was in the morning.

Q. Who were present at the meeting?

A. Mr. Moorehead, Mr. Denson and myself, Mr. Slocum, I think, I am not sure.

Q. The architect? A. Yes sir.

Q. What did you talk about on that occasion?

A. Well, Mr. Moorehead had been to Reno several times going over the plans of the hotel with mother and myself and I was very anxious to see if he had incorporated the ideas we discussed with him in the plans he was working on in Oakland.

Q. You, of course, knew that Mr. Denson was going to be present at that conversation?

A. Yes.

Q. Why was he present?

A. I think Mr. Denson wanted to be acquainted with the plans. I don't know any particular reason why Mr. Denson was present there. We were going over the plans with the engineer.

(Testimony of Charles W. Mapes, Jr.)

Q. Did Mr. Denson enter into the discussion as to the plans?

A. He participated in talking and most of the time was spent on bringing Mr. Denson up to date and what had transpired on the plans.

Q. Who brought Mr. Denson up to date as to the development of the plans?

A. I don't know any particular person, just went over the [685] plans like anybody would go over the plans.

Q. Well, then one of the objects of the meeting was to bring Mr. Denson up to date as to the change of plans?

A. That wasn't the object of the meeting.

Q. Well, that was one of the objects, wasn't it?

A. I don't think it was an object of the meeting. That was the object of my meeting with Mr. Moorehead. Mr. Denson was perfectly—it was agreeable with me to have him listen in to the conversation.

Q. Didn't you testify a little while ago that you wanted Mr. Denson to be brought up to date with the plans?

A. Well, I stated what was done at the meeting.

Q. And were all the plans observed by Mr. Denson on that occasions?

A. I think he went over them.

Q. Did he make any suggestions?

A. Not that I recall.

Q. He may have but you don't recall that?

A. I don't think he made any suggestions.

Q. Made many?

(Testimony of Charles W. Mapes, Jr.)

A. I don't think he made any suggestions. I think he probably asked questions on some of the changes that had been made and he expressed approval. He thought it was progressing along very fine.

Q. Well when did you meet Mr. Denson again after December 28, [686] 1945?

A. Well, to the best of my knowledge I met Mr. Denson around January 25th at Reno at my home, and January 26th.

Q. And where did you meet him?

Mr. Cooke: He said at his home.

A. At home, at my home.

Q. Well at that time he was a house guest at your home, wasn't he? A. No, he was not.

Q. Wasn't he? A. No sir.

Q. How many days during his visit here did you meet with him at your home?

A. I saw Mr. Denson two days.

Q. The 25th and 26th?

A. 25th and 26th.

Q. Of January? A. Of January.

Q. 1946? A. Yes sir.

Q. Well, were hotel matters and affairs talked about at those meetings? A. Yes.

Q. Was the 12-foot strip discussed?

A. I believe so. We were trying to get it from the city [687] and it was on our minds.

Q. Mr. Denson just reminded me that you phoned Mr. Denson on the 26th or 27th of Decem-

(Testimony of Charles W. Mapes, Jr.)

ber, 1945. While he was in Los Angeles. Now is that so?

A. I believe that could be so. I told you I wasn't definite. I knew I was down in San Francisco around the 28th.

Q. And that meeting to which you have testified occurred in Mr. Moorehead's office on December 28th?

A. Yes.

Q. In other words, you sought the meeting?

A. There were two meetings with Mr. Denson, one in Mr. Moorehead's office on that day and another meeting at the Levington Hotel later.

Q. In Oakland?

A. In Oakland. I think both Mr. Denson and myself were registered in the hotel at that time.

Q. What did you discuss with reference to the hotel on that date?

The Court: Did this have reference to December or January 1946?

Mr. Platt: December 28th.

Q. You only referred in your examination to one meeting with Mr. Denson on the 28th and now you say you had another meeting later in the day at the Levington Hotel?

A. You only asked me about one. Do you want to know what [688] the main purpose for Mr. Denson and I to get together at this particular date was the fact that I wanted him to get together with me to draw up a written agreement and how we were to handle our association in the hotel. Right after we met

(Testimony of Charles W. Mapes, Jr.)

in Mr. Moorehead's office I walked to the hotel with Mr. Denson. I think we went up to his room and I said, "Mr. Denson, can we get together on some definite terms between you and I?" And he said, "Charles, I have to leave immediately for Visalia. I have to do some business on my hotel." I said, "Mr. Denson, I think it is high time that you and I got together." Mr. Denson got in such a hurry that I practically helped him pack his bags and watched him check out of the hotel, with the understanding that he would get together with me as soon as he got this business through so that we could get together and get everything in black and white.

Q. After that you met Mr. Denson in Reno on January 25th and 26th? A. Yes.

Q. How did Mr. Denson happen to come to Reno at that time, do you know?

A. Mr. Denson promised me that he would come to Reno and that we would get together on our agreement. This particular time we had our plans and specifications and permit had been taken out to build the hotel. I went over the plans and showed Mr. Denson the specifications, told him that the permit had been [689] applied for; also Mr. Denson saw the building permit.

Q. Let me ask you this, Mr. Mapes. Did you ever offer any objection to Mr. Denson as to the percentage of payments for rental that your mother was to receive or that you and he were to pay?

Mr. Cooke: Objected to as irrelevant and immaterial. The contract speaks for itself.

(Testimony of Charles W. Mapes, Jr.)

Mr. Platt: Well, if it speaks for itself, your Honor, then this said agreement goes out of the window. I think counsel ought to take one position or the other.

The Court: Objection overruled. You may answer the question.

A. What percentages are you talking about?

Q. Percentages appearing in section 5 of the previously addressed questions.

(Previous question read.)

A. No, I don't believe so because Mr. Denson had always said that he and I would take care of mother, that everything would be fair and reasonable, that Mrs. Mapes would always be taken care of. That was my understanding.

Q. And do I understand that he made that statement repeatedly?

A. Mr. Denson made that statement while we were negotiating this preliminary agreement with mother.

Q. Well, how many times did he make it since the contract was signed? [690]

A. Not very many, if at all.

Q. Well, how many?

A. I doubt if he mentioned it after that.

Q. Didn't I understand you to testify that he did mention it on different occasions?

A. He did mention——

Mr. Cooke: (Interrupting) What counsel understands is not a question the witness can answer.

(Testimony of Charles W. Mapes, Jr.)

The Court: Objection overruled. He was calling his attention to the testimony.

A. He did mention it.

Q. Did you testify that on several occasions Mr. Denson said that he would always take care of mother?

A. I did.

Q. And that this is why you never offered any objection to any part of this agreement or section 5, concerning the payments that you and he were to make to your mother and she would receive?

A. I didn't say—that wasn't the reason for me not raising any objections. I said Mr. Denson had repeatedly told me while we were negotiating with mother on this preliminary paper, on the meetings we had had previous to that, "Charles, don't worry, we will always take care of Mrs. Mapes."

Q. In order to understand you, Mr. Mapes, he never, according to your testimony, made such a statement subsequent to the [691] signing of this agreement?

A. Not that I can recall.

Q. Well, you mean after this agreement was signed he never made such a statement?

A. I can't recall.

Q. And there is no doubt about this, is there, that you yourself never made any objection at all to the rental percentage provisions provided in this agreement? I mean objections to Mr. Denson?

A. It was always my understanding—

Q. (Interrupting) Now will you answer the question.

A. I can't answer your question yes or no.

(Testimony of Charles W. Mapes, Jr.)

Q. Well answer it yes or no and explain it. I think the court will permit that.

(Question read.)

A. No, I didn't. It was my understanding if there were anything wrong, Mr. Denson and I would take it upon ourselves to correct it.

Q. You saw Mr. Denson on two occasions, January 25th and January 26, 1946, at your mother's home in Reno? A. Yes.

Q. Is that right? A. Yes.

Q. Were hotel matters discussed?

A. Yes. [692]

Q. Was there any discussion between you and your mother and Mr. Denson about any visit that Mr. Denson had made to Mr. Hopper on or about January 25, 1946, with respect to the 12-foot strip?

A. I believe so. I believe so.

Q. You believe so? Do you remember what Mr. Denson said?

A. No, I think that was more or less between mother and Mr. Denson at that time. I was busy taking out the building permit.

Q. But you heard some of the conversation?

A. I think I recall.

Q. And your recollection is it was on about the 25th or 26th of January?

A. I don't know what day it was on.

Q. When did you see Mr. Denson again?

A. The next time I saw Mr. Denson was around April 1, 1946.

(Testimony of Charles W. Mapes, Jr.)

Q. Where did you see him?

A. At the Sir Francis Drake Hotel.

Q. How did you happen to meet him at the Sir Francis Drake Hotel on April 1st?

A. I met him in the morning and had breakfast with him and then proceeded over to Mr. Moorehead's office for a meeting.

Q. How did you know that Mr. Denson was going to be in San Francisco on that day and meet you?

A. I think Mr. Denson had called mother around the 25th or [693] 26th of March, mentioned something about wanting me to come down to Los Angeles to look at some furnishings the interior decorator in Barker Bros. was working on. I wasn't home and Mr. Denson called me the next day, the 26th or 27th.

Q. Called you personally?

A. Called me personally and Mr. Denson mentioned that he had this young lady from Barker Bros., who was working on furnishings for the hotel and wanted me to go down to Los Angeles. I told Mr. Denson I didn't want to go down to Los Angeles, I wanted to get together on an agreement with him so that he and I would have our association down in black and white, that I was a little hurt that he was going ahead definitely making plans on furnishings without even consulting me, that this was the first I had ever known about it, his going after furnishings with Barker Bros.

(Testimony of Charles W. Mapes, Jr.)

Mr. Denson said he had already made the arrangements with Barker Bros. and it would look very bad for him if he couldn't go ahead. I said, "Mr. Denson, I will call you back later." I think I called him up two days later and said I couldn't go to Los Angeles but I would meet him in San Francisco in Mr. Moorehead's office——

Q. (Interrupting) There is one thing certain, isn't there, Mr. Mapes——

Mr. Cooke: (Interrupting) Did you finish your answer? I thought you started to say something.

Witness: I think I finished. [694]

Q. Well, there is one thing certain, isn't there, Mr. Mapes, that Mr. Denson didn't close any deal with Barker Bros. or anybody else without first consulting you?

A. I wouldn't have any knowledge.

Q. At least if he did, you have no knowledge of it?

A. I had no knowledge until he called me that he was even consulting.

Q. He sent for you to consult, didn't he?

A. He wanted me to go and see the plans and ideas.

Q. It had been suggested that I ask you whether you yourself hadn't been making some inquiries about furnishings and equipping the hotel, providing the lay-out, as it is termed here?

Mr. Cooke: When, what time?

Q. Well, I recall reading from your letter that

(Testimony of Charles W. Mapes, Jr.)

you had an interview with some representative from Dohrmann Company.

A. This salesman from Dohrmann Hotel Supply, which would have our kitchens and the architects, they were to furnish all the public spaces. At that time we were working on drawings too that we could present to the various furniture companies to get respective bids. I didn't contact any furnishing people.

Q. Had you contacted any other people, equipment supply people or coffee shop supply company?

A. Only as pertained to the construction of the hotel itself.

Q. And did you confer with anybody with respect to furnishing and equipping the hotel as provided for in the agreement?

A. No, I hadn't. So far off that it wasn't necessary.

Q. Well, had you independently consulted any supply company in Florida? A. In what?

Q. The State of Florida?

A. State of Florida?

Q. Yes.

A. No. Supply company—what do you mean by supply company?

Q. On any part or portion of the contemplated equipment?

A. Do you mean equipment of the hotel or construction?

Q. Any part or portion of the lay-out equipment.

(Testimony of Charles W. Mapes, Jr.)

A. It isn't clear—we have about a thousand contracts, Mr. Platt.

Q. Included in the agreement with respect to your furnishing the hotel with Mr. Denson?

A. No.

Q. Well, when you met with Mr. Denson at Mr. Moorehead's office in Oakland, who were present?

A. There was Mr. Denson, I think my uncle, William S. Hall, Mr. Moorehead, Mr. Slocum, Miss Mason and myself.

Q. What was said and done at that meeting?

Mr. Cooke: Same objection heretofore made, irrelevant and immaterial.

The Court: Same ruling.

Q. Mr. Denson had Miss Mason present the work she had done [696] for Barker Bros. on the hotel. We looked at some of the drawings. The plans were very much out of date and we discussed several of the ideas she had in there that were not practical. The coffee shop was much too small and where the kitchen lay-out was made I recall that the help had to go to the back of the kitchen for the dishes and it wasn't worked so it would save the help any steps. There were several undesirable things. Mr. Moorehead was really a little impatient that we were listening to Miss Mason at that time because we were discussing public space and that was part of his job, to make the lay-outs for the public space.

Q. Well, it is true, isn't it, that you participated

(Testimony of Charles W. Mapes, Jr.)

in all that conversation and received what benefit could be derived from the conversation through Miss Mason's presentation?

A. There wasn't any benefit; the plans were so out of date.

Q. Well, there was nothing concealed from you about what Miss Mason, a representative of Barker Bros., presented?

A. No, I don't think so.

Q. And did Mr. Denson even indicate or tell you that he was going to close any deal with Barker Bros. without consulting you?

A. I don't recall that he did, but he expressed his ideas as coinciding with Miss Mason's. He liked the lay-out arrangement.

Q. How long did that conference continue in Oakland at that time in Mr. Moorehead's office?

A. Oh, maybe an hour, an hour or two hours, I don't know.

Q. And did you have any further conference?

A. Yes, I drove Mr. Denson and Miss Mason back to the Sir Francis Drake Hotel. Met Mr. Denson later that afternoon at his hotel room in the hotel.

Q. Was there anybody else there beside you and Mr. Denson?

A. Just Mr. Denson and myself.

Q. What was discussed there?

A. I asked Mr. Denson if we couldn't get together on our agreement about how we were to operate the hotel. Mr. Denson said, "Why, Charles,

(Testimony of Charles W. Mapes, Jr.)

you are not to operate the hotel; you are to go away to law school." I said, "Oh no, Mr. Denson, I intend to take a very definite part in the hotel." I said, "If we don't get together, you and I, how are we going to be able to draw up the lease with mother on the operation of the hotel?" Mr. Denson says, "You will recall I already have the contract with your mther. I intend to make it stick." I said, "Mr. Denson, how about our agreement, whereby you were to have 30 per cent of the hotel and I was to have 70 per cent of the hotel?" He said, "Oh, that, well, it is 50-50 now." I told Mr. Denson if that is the way he felt, I couldn't do any business with him.

Q. Hasn't Mr. Denson always insisted, when this matter came up, that it was a 50-50 arrangement?

A. Not until that time. It has always been 30-70, been agreed [698] upon.

Q. In the presence of anybody else?

A. In the presence of my mother.

Q. In the presence of anybody else?

A. It was never discussed in the presence of anybody else.

Q. Well, you heard Mr. Denson's testimony here, didn't you? A. Yes.

Q. Didn't you tell Mr. Denson that you were offered, that your mother was offered, an appreciable sum of money for the gambling rights in the sky room and that is why you did not want to go on with him with the lease?

(Testimony of Charles W. Mapes, Jr.)

A. Absolutely not.

Q. Absolutely not? A. No.

Q. As a matter of fact, do you know whether your mother has been offered anything of that sort? A. Been offered what?

Q. Any appreciable amount of money for the gambling privileges in that hotel? A. No.

Q. No offer of that kind has been made?

A. None.

Q. And you are very certain about that?

A. To my knowledge I don't know of any.

Q. Never heard of it if there is? [699]

A. No.

Mr. Platt: I think that is all.

Examination

By Mr. Cooke:

Q. This meeting that you had with Mr. Denson at the Sir Francis Drake Hotel, that was on the same afternoon of the same day that you met at the Levington Hotel, is that true?

A. What date is this, Mr. Cooke?

Q. Well, I think that is January—no, that is April 1st you were telling about, if my notes are right, that you had a meeting April 1st at the Drake. Is that right, that this meeting that you had with Mr. Denson alone in the afternoon was a continuation, so to speak, of the meeting that you had in the forenoon of April 1, 1946, at the Sir Francis Drake Hotel?

(Testimony of Charles W. Mapes, Jr.)

A. It was the same day.

Q. The afternoon of the same day?

A. It was all on April 1st, yes.

Q. The meeting at the Drake Hotel was in the morning?

A. No, April 1st the meeting was at Mr. Moorehead's office in the morning and then we had a meeting in the afternoon at the Sir Francis Drake on April 1st.

Q. And that is where you and Mr. Denson met alone, nobody else being present?

A. I went to his room and just Mr. Denson and myself.

Q. And the conversation that you related took place in his [700] room?

A. That is right.

Q. What was the occasion or reason for you and he getting together in the afternoon at that time? Hadn't you finished your business in the forenoon?

A. Well, his meeting in the afternoon wasn't related to the meeting in the forenoon at all. I was trying to get together with Mr. Denson so that he and I could get our association for the hotel written down.

Q. Did you make an appointment with him to meet him at his room in the hotel in the afternoon?

A. Yes, I think I did.

Q. What do you recall about the arrangements for that purpose?

(Testimony of Charles W. Mapes, Jr.)

A. I told Mr. Denson that I wanted to get together with him.

Q. You told him that in the forenoon?

A. I believe I did. And he invited me to his room when we got to the hotel.

Q. How long a time did this conversation in his room take place in the afternoon?

A. I believe about an hour.

Q. Had you and Mr. Denson ever discussed the terms of your partnership, prospective partnership, in the operation of this lease, outside of the 30 per cent and 70 per cent arrangement you already mentioned?

A. Did we discuss anything at all? [701]

Q. Yes, did you discuss what would go into this written partnership agreement if and when you entered into it?

A. Yes, I think at my discussion with Mr. Denson the fact that I wanted the right to buy out his interests in case anything should happen to him, being an older man and his life expectancy being shorter than mine. I think that was agreed with Mr. Denson and myself if anything happened like that, I would buy his interests in the hotel.

Q. How about your interest, was anything said about that, who wished to get that in case you dropped out of the picture?

A. I don't believe that was brought up.

Q. Well, that was one of the things. Then this 30 and 70 per cent division matter was discussed

(Testimony of Charles W. Mapes, Jr.)
as you already testified. Do you recall anything else?

A. It was very difficult to pin Mr. Denson down. Each time I saw him he was going away some place and we never could definitely get together. He was always coming back to Reno to get together with us and never could get together.

Q. Was the matter of both of you, he and you together, giving your time and attention to the business of running the hotel, discussed between you and Mr. Denson on any occasion?

A. Mr. Denson at one time mentioned to me the fact that he would like to be managing director and have that appear on the stationery and hotel. He thought he ought to be entitled to that because he had more experience in the hotel business than myself. I said, "Oh, no, Mr. Denson, I am not going to give you full control of the hotel, but I want you to participate with me and I will give due credit to any of your experience and appreciate any suggestions you have, but I can't let you control the policy of the hotel."

Q. What did he say to that?

A. He said, "Well, it isn't necessary and I won't insist on it."

Q. You told counsel in your testimony that this occasion in the afternoon in the room that you already mentioned, was the first time he said anything about division of 50-50 of the proceeds of this partnership or prospective partnership business. Is that correct?

(Testimony of Charles W. Mapes, Jr.)

A. That was the first to my knowledge, yes.

Q. Before that you told us that it was always 30 and 70, 30 to him and 70 to you?

A. That is what we agreed on, yes.

Q. How many different times, if you can tell us, was that specific division, those figures mentioned, 70 per cent to you and 30 per cent to him, previous to the time of this meeting?

A. It was agreed on at the meeting at the Levington Hotel and it was later verified in front of mother around September 22nd, before we signed the preliminary agreement, the three of us signed the preliminary agreement. [703]

Q. On two occasions?

A. There were two occasions. Of course it was considered by us that is the way it was all the way through.

Q. Do you recall those particular figures being discussed on any other occasion except those two?

A. I think we mentioned it since then. I don't definitely recall. I think it was mentioned at this meeting at the Levington Hotel on December 28th.

Q. Did Mr. Denson, during any of those conversations where the 30 and 70 per cent division was discussed, make any objection to it? Criticize it in any way?

A. No, that is what we had agreed on.

Q. You stated on your examination by plaintiff's counsel a moment ago that you did not know that Mr. Denson was consulting with Barker Bros. in regard to lay-outs and equipment for the hotel. Do

(Testimony of Charles W. Mapes, Jr.)

I have that right? You didn't know until you had this meeting with him about April 1st?

A. No, he called me previous to that time and told me he had this party, this interior decorator, who had been working on the interior plans for the hotel, four or five days previous.

Q. Then is it correct to say that down to four or five days previous to April 1st, 1946, you did not know anything about his consulting with Barker Bros. upon that matter?

A. Yes; I did not know anything about it.

Q. When did you first learn that he was consulting with anybody [704] in regard to possible equipment or even arrangements for equipment for the hotel, with Barker Bros. or anyone else?

A. Well, of course, I knew about Barker Bros. after the April 1st meeting and it wasn't until about the middle of April or the first of May that I went out after furnishings on my own that I found out Mr. Denson had contacted these other firms.

Q. On April 1, 1946, you didn't know he had contacted anybody at that time except the Barker Bros., is that correct? A. Yes.

Q. And you learned of his contacting the other parties later on when you went to see the same people? A. Yes.

Q. Is that how you learned of it?

A. I didn't get your question.

Q. How did you learn he was contacting these other parties subsequent?

(Testimony of Charles W. Mapes, Jr.)

A. They told me Mr. Denson had been there previously.

Q. Did you learn from Mr. Denson that he had contacted anybody except the Barker Bros., as you have already told us, prior to April 1, 1946?

A. I believe the Barker Bros. was the only one that was mentioned.

Q. Going back to October 4, 1945, some questions were asked you in regard to the signing of the agreement at my office. You remember that occasion, do you? [705]

A. Yes.

Q. Were you there throughout during the entire meeting, that is to say; when Mr. Denson and your mother left, did you go with them or did you go out before? Can you tell us about that?

A. As far as I recall now, I think I was there all the time.

Q. Did you hear Mr. Denson say to me during that conversation, or during any state of it, for me to draw the lease and he would sign it?

A. No, he did not say that.

Q. With regard to date April 10, 1946, that counsel has asked you about, you remember the meeting that was had in my office, yourself and Mr. Denson and myself being there?

A. On April 10th?

Q. Yes, either April 10th or 11th, I am not sure exactly which.

A. I think Mr. Denson was there and myself and you were present.

Q. At that time do you recall what, if anything,

(Testimony of Charles W. Mapes, Jr.)

I said to him about returning to him this ten thousand dollars?

A. You offered to tender his ten thousand dollars back to him and Mr. Denson said something to the effect, "I won't accept it. I have a contract here and I want to go through with it."

Q. Do you recall my saying anything to him that he better get himself a lawyer?

A. I think he did mention to you that you couldn't represent these people and himself, that before he went any further he [706] would have to get a lawyer.

Q. I said that to him?

A. I think he said that.

Q. That I said it?

A. Yes.

Q. Calling your attention to date September 24, 1945, when the preliminary agreement was signed, or at least was drafted and discussed in the office, do you remember anything being said by me to Mr. Denson by way of a question as to why the preliminary agreement, when it was contemplated, the lease should be drawn in a few days?

Mr. Platt: I think, your Honor, I ought to exercise Mr. Cooke's personal professional privilege. If he persists, if the Court please, in injecting his own testimony in the case, I certainly will persist that he is waiving his personal professional privilege. I object to any such questions without presenting any law.

The Court: I think if that examination persists along that line, you have an opportunity to examine

(Testimony of Charles W. Mapes, Jr.)

him and go fully into all the questions and all matters pertaining to the subject testified to by this witness that have come from Mr. Cooke.

Mr. Platt: Well, with that understanding——

The Court: I grant that permission if you desire. [707]

Mr. Cooke: My understanding in regard to privileged communications is this, that where communication is made in the absence of the third party, in this case Mrs. Mapes, it isn't privileged. I could claim any privilege if I wanted to in regard to this. That is the reason I feel free——

The Court: I think later, if counsel wants, he will have opportunity to examine on any of these questions.

Mr. Cooke: It is all right with me, your Honor. Concerning this other privilege, of course, the privilege applies to my client, but so far as I am permitted, I will be glad to tell all I know about the matter at any time.

Mr. Platt: Your Honor will recall I asked Mrs. Mapes whether she had any conferences with Mr. Cooke before she signed this agreement and was stopped on the question of professional privilege. I propose to show to your Honor a little later that Mr. Cooke has made himself a witness in this case.

The Court: Well, I agree with that insofar as any matters that have been brought out here by any witness, as to those matters and any matters

(Testimony of Charles W. Mapes, Jr.)
necessarily connected with them. I think otherwise it would be a one-sided proposition. Read the question.

(Question read.) [708]

Mr. Sinai: If the Court please, may I interject this objection, that according to the statement by Mr. Cooke, according to the question which he has propounded to the witness, Mr. Cooke is precluded from interrogating further unless he obtains the consent of Mr. Denson, who also has the right to exercise that privilege. The prior question was to the effect that did you not, Mr. Mapes, hear me tell Mr. Denson that he would have to get another lawyer from now on, up to that point and that is if prior Mr. Cooke must have been attorney as well for Mr. Denson, so therefore, if there is any privilege in this case it appears to me that Mr. Denson would be the one who would have to consent to Mr. Cooke's introduction.

The Court: That sounds reasonable, if that is the situation.

Mr. Sinai: That is the situation.

Mr. Cooke: I deny it.

The Court: Why was the statement made in regard to getting another lawyer?

Mr. Cooke: Getting his own lawyer. I was never employed by Mr. Denson for a single minute. There is no testimony, not a scrap of it, that indicates anything of the kind. He came into my office as a stranger brought in there by Mrs. Mapes,

(Testimony of Charles W. Mapes, Jr.)

that is the evidence so far, and I drew the paper up as counsel for Mrs. Mapes, and that is what he states in his own affidavit. [709]

The Court: I don't think, coming right back to the root of this thing, I don't think Mr. Denson was in there depending entirely upon Mr. Cooke for legal advice. He came after consulting with Mr. Young in either San Francisco or Oakland. Mr. Young had been his attorney for 25 years. Mr. Young had prepared this original draft and it isn't to be assumed that Mr. Young didn't—Mr. Denson's testimony was that it was prepared in Mr. Young's office.

Mr. Sinai: That is right. It was based on the question propounded by counsel that he said he better get a lawyer.

The Court: I am not inclined to consider Mr. Denson as a man sitting depending upon the advice of the other person's attorney, because I think he was well fortified with advice by Mr. Young. That is my impression. It does not seem to me that a lawyer who has served a client for 25 years, who is permitted so recently to type a contract on an important business matter, also should not have been consulted, or wouldn't at least have knowledge, this good client of his for 25 years, in the matter.

Mr. Sinai: I based it on this statement that he was [710] not acting for Mr. Denson. I would prefer to withdraw it.

The Court: At one time the thought was in my mind that perhaps Mr. Denson had consented that

(Testimony of Charles W. Mapes, Jr.)

Mr. Cooke act for both parties in this matter, but when he came in there armed with the draft, at least a substantial part of this present agreement, I don't think it could be considered as having acted on Mr. Cooke's advice in this.

Mr. Sinai: We submit it to the Court.

The Court: That is my view of it.

(Question read.)

The Court: Objection will be overruled and answer the question.

A. I believe he did mention something to that effect to Mr. Denson. Mr. Denson said at that time he was very anxious to have it signed because he wanted to have something to show.

Mr. Platt: What do you mean, to have the lease signed?

A. Not the lease. This is the agreement, as I understood the question.

Mr. Cooke: The document of September 24th.

A. The document of September 24th, isn't that the question?

Mr. Cooke: That is the one I was talking about.

(Question read.)

A. You have me confused. Are you talking about the lease or [711] the September 24th agreement?

Q. Talking about the preliminary agreement, September 24th, when that was discussed there. At the time the party broke up, if you remember my making

(Testimony of Charles W. Mapes, Jr.)

that statement to Mr. Denson, or asking him that question, as to why we should go through with this agreement here when it was contemplated a lease should be drawn up in a few days?

A. I remember Mr. Denson stating the reason was he wanted the preliminary agreement signed at that time because he wanted to show something definite.

Q. Who were present there beside you and me on that occasion, in the room so they could hear the talk?

A. My mother was there and possibly your secretary, Miss Yparraguire. She was in and out.

(Short Recess.)

MR. MAPES

resumed the witness stand on further examination by Mr. Cooke.

Q. Counsel for plaintiff asked you some questions in regard to discussions about the gambling in the sky room and you answered him. Do you remember what meeting that was, Mr. Mapes, where that talk was had between you and Mr. Denson?

A. I never told Mr. Denson about any offers.

Q. Well, the question was asked you in regard to talk with Mr. Denson and you answered. What I am trying to identify was the meeting you are referring to the meeting of April 1st that [712] was down at San Francisco, you testified, at the time Miss Mason was up there, during that meeting or

(Testimony of Charles W. Mapes, Jr.)

on that occasion, whether at the same time or later on, was the matter of this sky room and the gambling priviledges discussed in any way between you and Mr. Denson?

A. Nothing was mentioned about that at that meeting?

Q. When you say at that meeting, was that the time you had one meeting in the forenoon and another one in the afternoon with Mr. Denson, where you had your conversation about the 30 and 70 per cent?

A. Oh, there was something mentioned about the sky room at the meeting in the morning. I think I did mention something about the sky room at the meeting in the forenoon, but it didn't have anything to do with the gambling.

Q. Did you hear Mr. Denson's testimony in regard to your stating to him on this meeting, I think it was, that you had received some big offer for the sky room? Do you recall his testimony about your offer for gambling purposes?

A. That was his testimony.

Q. I am asking you if you heard his testimony?

A. Yes.

Q. Was there any such conversation ever had?

A. No.

Q. In which you made any such statement of that kind to him? A. No. [713]

Q. Either at that time or at any time?

A. I did not.

(Testimony of Charles W. Mapes, Jr.)

Q. I show you defendants' Exhibit 1 for identification and ask you to look that over and see if you recall anything about how it came to be made up in its present form, in the form that it is there?

A. I believe this is a copy of the agreement that Mr. Denson brought up to Reno. He had three copies and I think this is one of the copies of the agreement he had made up.

Q. Well, there are some interlineations and yellow sheets attached there. Were they part of it when he brought them up?

A. These yellow notes, as I recall, were pencilled by you in your office.

Q. Where and under what circumstances? Who were present at the time and what time was it?

A. As far as I recall, I think it was September 24th.

Q. 1945? A. 1945.

Q. Who were present?

A. Mr. Denson was present and mother and myself and Mr. Cooke.

Q. And what do you recall as to any discussion being had of the various matters, lead pencil interlineations and yellow sheets attached there? Were they discussed by the parties or not?

A. By all of us and the interlineations were discussed by all [714] of us.

Q. Did anybody raise any objection to them in any way at that time?

A. I don't believe so.

Q. Do you remember what was said at the con-

(Testimony of Charles W. Mapes, Jr.)

clusion of the discussion about the changing of the typewritten document that Mr. Denson prepared? What was said as to what was going to be done then and who was to do it? Was anything said about redraft or anything of that kind?

A. I didn't understand the question.

Q. Was anything said about redrafting the document with the changes, the lead pencil changes on the yellow sheets?

A. Yes, we all agreed on these changes that had been discussed and had been pencilled in.

Q. You stayed there throughout the meeting, did you? A. Yes.

Q. Aside from the lead pencil interlineations and yellow sheets attached, is that document, so far as you know, in the same form as it was when Mr. Denson handed it to you or your mother at your house? A. Yes, I believe it is.

Q. Where did you first see it?

A. Mr. Denson—I was with him and he showed it to us on September 22nd and 23rd, the day or two before.

Q. The day or two before you were up to the office? [715] A. Yes.

Mr. Cooke: We offer the document in evidence, your Honor.

Mr. Platt: Same objection, your Honor. Nobody knows yet anything about the interlineations and they manifestly are not made a part of the final agreement that was entered into and they are certainly immaterial; can't be binding on anybody.

Mr. Cooke: Well, in answer to that, your Honor,

(Testimony of Charles W. Mapes, Jr.)

I am frank to say that for once I shall agree with Mr. Platt, but in view of the fact that they have gone so much into the past, for instance, as to what took place before, it seems to me that your Honor should have this as part of the document. If it has any sort of fundamental value at all, we should have it complete and here is presented in a fairly tangible form what the parties discussed and how they finally reached the agreement, the draft of which is the September 24th agreement. So far as the lead pencil interlineations are concerned, those are testified to have been made by me in every instance and the yellow sheets are attached the same way, so when you have this document with the folders, you have the document as first presented by Mr. Denson, plus those interlineations made by myself in lead pencil, as testified, and agreed upon by the witness. It seems to me it might be some help to the Court to understand what was done there and how it was done.

Mr. Platt: May I presume to submit to your Honor [716] what I think the picture is?

The Court: Yes.

Mr. Platt: There is no question from the evidence that the original draft of a proposed agreement was submitted by Mr. Denson. There is no question from the evidence but that the draft was considered by Charles Mapes and his mother for at least two days before. There is no question from the evidence that that draft was presented to Mr. Cooke, attorney for the defendants, in his office, and

(Testimony of Charles W. Mapes, Jr.)

there is no question that, in accordance with the understanding and the draft and everything else, that went with it, Mr. Cooke himself put in final form this agreement which has been introduced in evidence here and which has been signed by all the parties. Mr. Denson didn't draw this final draft. Mr. Cooke drew it and certainly, as attorney for the Mapes, that final draft of the agreement contains what those parties agreed to and any notations by Mr. Cooke made beforehand certainly are immaterial.

The Court: I am inclined to agree with you. The objection will be sustained. Inasmuch as testimony has already been admitted concerning matters which took place before and after the signing of the agreement of October 4th, I would see no valid objection to bringing in by way of what took place there the substance of matter of those interlineations, their written [717] statements there, if they were matters that were discussed between the parties at that time, just as we have admitted matters that were discussed at different times before that agreement. I can't see where there would be any difference in admitting the evidence we have admitted as to matters which have taken place prior to the signing of October 4th agreement and the admission of testimony concerning the subject matter of those pencilled statements.

Mr. Cooke: That is what I thought, your Honor, if I understood. I thought it would come in under the same principle.

(Testimony of Charles W. Mapes, Jr.)

The Court: Can you point out any distinction?

Mr. Platt: Well, if your Honor please, notations made by an attorney——

The Court: (Interrupting) I am not talking about notations, but they can use them to refresh their memory and bring out the testimony.

Mr. Platt: As far as the evidence with respect to conversations they covered, I wouldn't offer any objection, but here is offered in evidence a tentative form of agreement with notations made by an attorney, which is a very different thing.

The Court: The objection will be sustained as to admission of that exhibit with those pencilled [718] additions, but I would not be adverse to permitting testimony of conversations, if there were any conversations, that involved the subject matter of this.

Mr. Platt: We wouldn't offer any objection to such evidence.

Mr. Cooke: I thought the foundation had been laid, if your Honor will permit just a moment, by different witnesses testifying how it was made and that even pencilled interlineations—I don't care who made them, by me, attorney for the Mapes or who they were made by, somebody made them—were agreed to and discussed at that time and whether I was acting as attorney for one side or the other would be entirely immaterial in any event, so that the client I was representing agreed and the other party agreed to the changes. I thought when I put

(Testimony of Charles W. Mapes, Jr.)

in that evidence, that laid the foundation for the document, so far as it goes. I am disposed to agree with counsel, that all of that matter is irrelevant and immaterial, but inasmuch as some of it went in, it seems to me only fair that all should go in and that this is even more important and more persuasive and convincing than oral conversation, because here we have something in permanent form and in the same form to which the parties agreed to it. They identify and establish its features as part of the history of this contract and transaction that occurred immediately before they signed, so if it is important at all, this [719] ought to be tremendously important. Of course my notion is, I will say frankly to your Honor, that none of that matter that occurred prior is material, but your Honor has taken a different notion and I am not questioning the propriety of it at all, but it seems to me all should go in. That is why I have been rather persistant about this, over-persistant, about this particular material.

The Court: Let us consider it well. Mr. Platt, your view is that you have no objections to the statements by the witnesses, if they could so testify, as to the subject matter or contents of those additions to the agreement?

Mr. Platt: I have been trying to take a consistent position, your Honor. I have no objection to conversations which occurred in the presence of Mr. Denson and, of course——

(Testimony of Charles W. Mapes, Jr.)

The Court: (Interrupting) Suppose it should appear that these written additions were made in the presence of Mr. Denson, were exhibited to him and discussed by him. I am not arguing—the testimony might be contradictory on that point, but supposing it was testified by the defendants' witness or any of the plaintiff's witnesses present at that meeting, without passing upon the truth or falsity of the statements, that they might make, or truth or falsity of what is [720] in those written notations—it was testified by a witness for the defendant that that conversation occurred embodying the substance of these written notations, you would not object to that testimony. What difference does it make then whether these are offered or not? What is the point you have of any objection to the offer?

Mr. Platt: The objection is that they were notations made by the attorney in the first place, and secondly, they were notations made by an attorney who, himself, drew up the final agreement and the law, or rather the inference, in equity and law is so strong that this agreement signed by Mrs. Mapes, the next day or two days afterwards, embodying what the parties agreed upon, the inference is so strong that such a document reflects upon the verity of the instrument itself. I am keeping in mind, if the Court please, that this final agreement was drawn by the same attorney who made the notations, according to what we know, and that he had Mrs. Mapes come up and sign it, this final agreement,

(Testimony of Charles W. Mapes, Jr.)
and the only purpose of such particular testimony is to repudiate the contents of the final agreement, which he himself drew.

The Court: The purpose in admitting all the testimony that I have permitted to go in, I might say on the parties' construction of this contract and the preliminary negotiations, was not [721] at all to be construed for or against the suitability or standing of this contract. The idea of the matter, as far as I am concerned, is that that contract stands as it is written, but only for the purpose of being able to decide some of these questions that have been raised here. For instance, the question of whether that provision in regard to time was violated and whether the equities of the case are such that specific performance should be granted and just to get the picture of the case and of the construction of the parties placed on the contract. My view of it is that this contract stands. It has to be considered just as it is written, that is my view, and if that was admitted it wouldn't make any difference what he said or did not say, it wouldn't take the place of that contract. That is my construction of this case.

Mr. Platt: Your Honor, our theory in producing evidence here is in accordance with the pleadings in the complaint. In other words, we plead a waiver of the time elements of the contract and we also plead estoppel. Now the only method by which we can establish that plea is to produce evidence here

(Testimony of Charles W. Mapes, Jr.)

showing not only the conduct of the parties preceding and subsequent [722] to the entering into of the agreement, but the statements made by the parties, the continuation of the acts by the parties, not only from a long distant time of the agreement, but to subsequent times, as we have endeavored to show here in the month of April, a short time ago. Now that is the purpose of our endeavoring to get in additional evidence, in order to establish the doctrine of equity and estoppel. We pleaded it and we have to prove it and that is why we have asked the indulgence of the Court to prove it and the Court had determined, of course, that this evidence for that purpose is admissible. As far as equities of the case are concerned, it is also necessary for us to establish that we are doing equity and we are ready to do equity and that can only be established through oral testimony. Now that is our position, but this evidence which is being admitted now does not bear upon either of those contentions or any of them.

The Court: Another thought that occurred to me just now is that that places Mr. Cooke in a position here of confirming the statements that these witnesses might make. It makes him, in a sense, a witness. A document written by him, a sort of narration of the conversations that are alleged to have taken place there and then there is presented here in court statements that he wrote with the understanding that they were written [723] down in the presence of the parties, makes him a witness

(Testimony of Charles W. Mapes, Jr.)
in this case. I will stand on the ruling heretofore made. The objection will be sustained.

Mr. Cooke: Of course, we may want to recall Mr. Mapes in our case in chief but I believe at the present time cross-examination, if so it may be called, will be waived.

The Court: Have you any questions at this time, Mr. Platt?

Redirect Examination

By Mr. Platt:

Q. Mr. Mapes, I don't recall whether I asked you this question, but I think I did. You are stating, according to your understanding and your testimony, that you are to receive 70 per cent of the proceeds of the lease or had a 70 per cent interest, and Mr. Denson had a 30 per cent interest. Do you mean by that that you were to pay 70 per cent of the cost and expense for furnishing the hotel and Mr. Denson was to pay 30 per cent?

A. I believe I testified previously to the fact that we never definitely could get Mr. Denson together on that, but so far as I was concerned, I was willing to put up 70 per cent of the cost.

Q. Have you ever operated a hotel?

A. No sir.

Q. You have had no hotel operating experience at all?

A. The family has operated several hotels in Reno.

(Testimony of Charles W. Mapes, Jr.)

Q. Have you ever personally operated any hotel?

A. I have assisted in the operation of 100 rooms.

Q. Where was that?

A. The Mapes Building.

Q. That isn't a hotel, is it?

A. No, but there are rooms and apartments. I do not claim to be an experienced hotel man, no, if that is what you mean.

Q. As a matter of fact, you don't know much more about it than I do?

Mr. Cooke: Objected to——

The Court: Objection sustained.

Mr. Cooke: I object to any question in regard to experience of the witness as being a hotel man. I do not think it is any issue in the case here.

Mr. Platt: We will see when the time comes. It is up to the Court when questions are asked.

Mr. Cooke: I make my objections to the Court.

The Court: There is no question before the Court.

Q. You talk about a conversation you had with Mr. Denson about the operation of the hotel, I mean the Mapes Hotel, if and when you and he operated it. You mentioned some conversation, the conversation that you had in that respect?

A. Yes. [725]

Q. Now to get right down to the question of understanding, was it your understanding that because of Mr. Denson's conceded long experience as a hotel operator, that he would in fact operate

(Testimony of Charles W. Mapes, Jr.)

the hotel along with you and make the proper suggestions, so that the hotel could be operated properly? Is that what you understood was going to be the fact and the condition?

A. It was understood that Mr. Denson, being older, would be well able, the two of us would be well able, to operate the hotel together.

Q. And did Mr. Denson ever state to you in any conversation that he ever had with you that he wasn't always ready and willing to cooperate with you in the management and operation of the hotel if you succeeded in getting it?

A. He stated I believe, as I testified previously, that he wanted to be the managing director and have his name appear wherever the hotel was mentioned and have control of the policy.

Q. Was that to the exclusion of you? Is that the way you understood it?

A. I told him I wouldn't agree with that.

Q. Did he represent to you that he was going to exclude you from the proposition of the operation of the hotel?

Mr. Cooke: I would like to interpose an objection to this, that this goes to the question of relation between [728] the witness and Mr. Denson and their partnership arrangement and certainly there is nothing in this case that involves the proposition that your Honor authorize specific performance of that. I do not think any court could compel anybody who did not want to do performance to per-

(Testimony of Charles W. Mapes, Jr.)

form it. It seems to me we are wasting time hearing testimony regarding squabbles and conditions between two prospective partners. Your Honor can't make any order in regard to it, any more than Irene Gladys Mapes can be compelled to specifically perform.

Mr. Platt: I submit the question is based upon the answer or answers given by the witness in reply to questions propounded by his own attorney.

The Court: The objection will be overruled. You may answer the question.

(Question read.)

A. Mr. Denson never properly considered me. That is one of the reasons we couldn't get together. He thought I should go away to law school and when it came to the operating function, he considered me as a kid, which I resented.

Q. Well, isn't it a fact that Mr. Denson, upon many occasions, said to you, "Charles, I have had a lot of experience as a hotel operator. We will go in and go along together until you get some experience and in the meantime we will work together and I will do most of the operating because I am experienced, but I am not shutting you out of equal privileges with me." [727] Now hasn't he said that to you repeatedly?

A. He said repeatedly that he wanted to handle the operation of the hotel himself and when we had the April 1st meeting, he didn't consider me

(Testimony of Charles W. Mapes, Jr.)
at all in the operation of the hotel. So far as I was concerned, I was to be miles away, going to law school.

Q. Who was present when he made such a statement to you?

A. That was in Mr. Denson's room, just he and I.

Q. Nobody else there, was there? A. No.

Mr. Platt: That is all.

Mr. Cooke: No further questions.

Mr. Platt: Call Mr. H. R. Cooke, attorney for the defendants, as an adverse witness. [728]

MR. H. R. COOKE

being first duly sworn, testified as follows, as an adverse witness:

Direct Examination

By Mr. Platt:

Q. Will you state your name, Mr. Cooke?

A. H. R. Cooke.

Q. You are practicing attorney here in Reno, Nevada? A. Yes sir.

Q. And have been for many years.

A. Yes sir.

Q. You are attorney for the defendants in this action? A. Yes sir, one of them.

Q. Which one?

A. I am one of the attorneys for the defendants in this action.

(Testimony of Mr. H. R. Cooke.)

Q. You have been an attorney for Irene Gladys Mapes, one of the defendants, for many years?

A. Quite some years. Since her husband died and before.

Q. And were you her general counsellor and adviser on legal matters with which she was concerned?

A. Well, I think so. She has had one other attorney during that time but aside from that one instance, I think I have acted in that capacity exclusively.

Q. I hand you a file record in the case, purporting to be the affidavit of H. R. Cooke, supporting the defendant's motion to dismiss and for summary judgment, filed on July 11, 1946, and will ask you if you signed and filed such an affidavit? [729]

A. Yes, that is my signature and my work.

Mr. Platt: I offer it in evidence, your Honor.

The Court: Any objection?

Mr. Cooke: Objected to as incompetent, irrelevant, and immaterial, affidavit as to what expired at the time and shortly before the drafting of the September 24th agreement. It covers more or less the same subject matter that is expressed in Defendants' Exhibit 1 for identification, which has been objected to. I object to it upon the grounds it is immaterial.

The Court: What is the purpose of this offer, Mr. Platt, of the affidavit?

Mr. Platt: Well, I desire to establish by it

(Testimony of Mr. H. R. Cooke.)

what actually did occur when Mr. Denson came to Mr. Cooke's office prior to the signing by Mrs. Mapes of the agreement entered into; at least, what did occur according to Mr. Cooke's statement.

Mr. Cooke: I withdraw the objection, your Honor.

The Court: It may be admitted in evidence as Plaintiff's Exhibit "Q."

Mr. Platt: And I desire to read it in the record.

(Reads Exhibit "Q".)

The Court: What is the date of that affidavit please? [730]

Mr. Platt: July 10, 1946.

Q. Calling your attention to this statement in the affidavit: "With the statement that said document had been prepared by him and that it represented what the parties had agreed upon." Did you believe that statement?

A. I think it is immaterial whether I did or not, your Honor. May I be allowed to make an objection on the witness stand?

The Court: You may make your objection.

A. I would say yes—I don't object.

Q. Well, did or didn't you?

A. What is that statement again?

Q. "With the statement that said document had been prepared by him and that it represented what the parties had agreed upon."

A. Yes, I understood that they had a discussion preliminary to coming to the office upon the mat-

(Testimony of Mr. H. R. Cooke.)

ters there and it was further discussed at the office and that document there, as I recall it, was handed to me by Mr. Denson as a form of agreement that he had used in some other occasion. I don't know exactly what he said.

Q. Was anybody else there in your office when Mr. Denson presented that?

A. Yes, I think Mr. Denson and Mrs. Mapes and Charles were there. I note in there that I stated that Charles wasn't there. Charles did not, as I recall, did not take very much part [731] in that. Mr. Denson did about all the talking, and myself, I got in a word once in a while.

Q. Then the affidavit proceeds: "That said document was submitted to affiant for the sole purpose of his re-drafting same into better legal phraseology and also that a number of carbon copies might be made for convenience of the parties," is that true?

A. Yes.

Q. "The affiant thereupon made a redraft, a copy of which is annexed to plaintiff's Complaint as Exhibit A," is that true?

A. Yes, that is right.

Q. " * * * with the required number of carbon copies; that save as herein stated and shown, the said Exhibit A annexed to plaintiff's Complaint was prepared by the plaintiff P. G. Denson and not by any attorney for defendants or either of them." Is that true?

A. That is right.

Q. But that draft that you prepared, what did you later do with it?

(Testimony of Mr. H. R. Cooke.)

A. Well, speaking from recollection only, without notes or any carbon copies or anything to refresh my recollection, as I remember Mr. Denson was anxious to have that matter mailed that night, have it redrafted and mailed and he gave explicit instructions about sending it to him in care of the Biltmore Hotel, I think is the hotel, and this was impressed upon my mind that he told me to mark the envelope "Please Hold," so it wouldn't follow him around and he would be sure to get it there and I think I got it off that night. I am not sure I did.

Q. I call your attention to Plaintiff's Exhibit "P" for [732] identification and ask you if that is the envelope with the contents of that agreement which was addressed as you say to Mr. Denson?

A. Yes, I would say so. It is my envelope and my return card, etc. The date of the mailing isn't shown, which would help me if I could tell it, but the instruction there—I only wrote him once I remember of. I think I only sent that one communication to Mr. Denson and that to the Biltmore Hotel and instructions "Please Hold" serves to identify that as the envelope I sent at that time, and I think included in the envelope were some three or four copies, that is my original impression, of the agreement of September 24th.

Q. I hand you what was purported to have been included in that envelope, an agreement dated September 24, 1945, and signed by Irene Gladys Mapes, first party.

(Testimony of Mr. H. R. Cooke.)

A. May I inquire if there are any more of these contained in that envelope? I do not remember sending just one.

Mr. Platt: That I do not know.

A. Well, I sent more than one. This may have been one of them, I don't know, I have no way of determining that, but it is quite probable this is one of them and I sent three or four more.

Q. Well, I call your attention to your signature as witness on that agreement, is that your signature? A. Yes. [733]

Q. And is that the signature of your secretary, Miss Yparraguire?

A. It is. I am speaking about the number of copies. There is no question about this document, but I don't remember sending just the one shown me.

Q. But you are certain about this, that this one was included in this envelope?

A. No, I can't say that particular one was, but I wouldn't say it wasn't either.

Q. No question about that being the signature of Mrs. Mapes? A. No.

Q. Or your signature? A. No.

Q. Or your secretary's signature?

A. No, those are all genuine.

Q. I can see a post mark "25/1945."

A. Is that Los Angeles or Reno? I think it was mailed that same night. That was received the 25th. Where is the Reno? With the glass, your

(Testimony of Mr. H. R. Cooke.)

Honor, it would appear—it is rather blurred and indistinct, but it would appear there is something 24, the month you can't tell, but the figure 24 appears there and then there is 194 blank there, but I would say that is the envelope and it was mailed on September 24th and received in Los Angeles, according to the stamp here, on the 25th.

Q. Now this agreement that I have handed you, signed alone by [734] Irene Gladys Mapes, was sent to Mr. Denson in accordance with his instructions to you?

A. Well, you say that agreement. I can't say that, Mr. Platt, except for the implication of the thing. If you ask for my recollection, I would say I sent three or four copies, as the case may be, unsigned, not signed by anybody, because my usual practice is to let the other party look at it before it is signed, but that one you have there is unquestionably signed by Mrs. Mapes.

Q. Do you know of any other agreement signed by her alone? A. No, I do not.

Q. Except the one you sent to Mr. Denson?

A. No, except that might have been signed at another date, at a later date.

Mr. Platt: Well, we offer it in evidence, if the Court please.

The Court: Any objection, Mr. Cooke?

Mr. Cooke: No.

The Court: Exhibit heretofore marked for identification now admitted in evidence as Plaintiff's Exhibit P.

(Testimony of Mr. H. R. Cooke.)

We will be in recess until tomorrow morning at 10:00 o'clock.

(Recess at 4:45 p.m.) [735]

Friday, December 13, 1946, 10:00 A.M.

Appearances same as at previous sessions.

MR. COOKE

resumed the witness stand on further examination by Mr. Platt.

Q. Mr. Cooke, Mr. P. G. Denson, the plaintiff in this action, was not in your office on September 24, 1945, is that true?

A. Yes, I think he was. It is my recollection.

Q. Well, you saw him on September 23, 1945, in Reno, didn't you?

A. My recollection is that the night before, that would be on a Sunday, I went down to Mrs. Mapes' home.

Q. What do you mean, Sunday, September 23rd?

A. Yes; and the thing was very informally mentioned about the lease. I don't know that any document was shown me down there. It may have been, and my recollection is that it was arranged then for them to meet again the next day at my office, or whether that was fixed at that time for the afternoon of the same day, I don't know. I think it was the afternoon of the next.

Q. Well, isn't it a fact that on September 24th,

(Testimony of Mr. H. R. Cooke.)

because of Mr. Denson's absence from Reno on that day, he said to you in effect to prepare the agreement and mail it down to him at the Biltmore Hotel at Los Angeles?

A. Yes, that was said on the 24th, in substance.

Q. Well, you prepared that agreement on the 24th, didn't you?

A. I think so. I am quite sure of that.

Q. And it was mailed out of Reno on the 24th, wasn't it?

A. Well, I am speaking from memory on those things, but I judge from the postmark on the envelope.

Q. That is what I am judging from.

A. I think I mailed it on the same day I made it. That is confirmed by the other documents there. I think that is right.

Q. It is a fact, isn't it, he wasn't in Reno in your office on the day that you prepared that agreement?

A. Yes. It was prepared on the 24th and my recollection is it was mailed on the afternoon of the 24th and this was discussed and these pencil notations were made that you refer to.

Q. Isn't it a fact that a conference was held on Sunday, September 23rd, and after that conference you saw no more of Mr. Denson in Reno, that he asked you to prepare the agreement and send it to him at Los Angeles and that you didn't see him at all after September 23, 1945, in Reno?

A. No, that isn't my recollection.

(Testimony of Mr. H. R. Cooke.)

Q. Are you certain that you had any talk with Mr. Denson in Reno after you prepared the final draft of the agreement?

A. Yes afterward, quite a while afterward April 10th of this year, I think the next time I think the next time I saw Mr. Denson.

Q. Let me put the question another way. Are you certain that you didn't see Mr. Denson in Reno any time during the month of [737] September, 1945, after you prepared the final draft that you sent to him?

A. Yes. I want to correct that other statement. I saw him October 4, 1945, along about then.

Q. Well, going back to my former question. Will you read it?

A. I answered it, that I didn't see him again in September.

Q. You didn't see him in September?

A. No.

Q. You prepared the answer, Mr. Cooke?

A. Yes.

Q. Beginning on page 14 there is set up an affirmative defense which you describe in the Answer as being "For a further necessary and fourth defense, the defendants allege and show that on September 24, 1945, it was contemplated and intended by all parties to said Exhibit "A"—which you will recall is the agreement. A. Yes.

Q. " * * * the plans of the proposed hotel structure, together with specifications for same,

(Testimony of Mr. H. R. Cooke.)

prepared by the Moorehead Company, should be annexed to said Exhibit "A" * * * which is the agreement," * * * and be approved in writing by the parties thereto within the time limit. That no copy of any plans or specifications were ever annexed to said Exhibit A and approved in writing by the parties." I am reading from a copy and if you have any doubt of the correctness of the reading, I [738] will get the original. At the time you prepared that agreement and mailed it to Mr. Denson, did you, yourself, make as a part of that agreement the plans and specifications to which you refer in the answer?

A. No. I think I was told they didn't have any then. We would have to go through without that, that is for the time being. There wasn't very much said about any plans or specifications. That is simply copied from Mr. Denson's draft. It wasn't discussed, as I recall it, especially.

Q. Then of course it is fair to say, isn't it, that if plans and specifications were not available at that time, Mr. Denson wasn't at fault for not having them attached to the agreement which you prepared?

A. No; I don't claim that he was, as I know.

Q. Well, you are setting it up here as an affirmative defense.

A. Well, it is introductory.

Q. The agreement, in the form in which it was

(Testimony of Mr. H. R. Cooke.)

sent to Mr. Denson, was prepared and stapled in your office, wasn't it?

A. Well, I didn't consider that agreement was prepared by me because I just copied Mr. Denson's, except in those respects that the parties wanted changes made, as shown by those lead pencil interlineations. It was partially prepared by me and partially prepared by Mr. Denson. About three-quarters of it, I think, was by Mr. Denson. [739]

Q. The mechanical preparation of that agreement was made in your office?

A. Yes, the retyping of it.

Q. When you all met later—by that I mean the plaintiff and the defendants, Mrs. Mapes and her son, Charles, in your office on October 4, 1945, and the agreement was executed by all of the parties in your office, the plans and specifications still remained unattached?

A. That is right.

Q. Did you suggest at that time that they ought to be attached?

A. No, I didn't know anything about it, further than I got the impression some way that there were not any plans or specifications to be attached, none prepared at that time. They hadn't started work and hadn't done anything. It seems to me it was a little too early to talk about it. It wasn't discussed in any definite way. I didn't see at any time any plans and specifications around my office.

Q. And you personally, as attorney for these defendants, have never made a demand upon Mr.

(Testimony of Mr. H. R. Cooke.)

Denson to have those plans and specifications attached to the agreement?

A. No, I don't think that was part of my duty.

Q. Well, have you ever advised the defendants to so inform Mr. Denson?

A. No. From October 4th, when the document was signed, down [740] to April, either the 1st or 10th, of the following year, that is of this year, I don't think I have heard of the Denson-Mapes transaction. I wasn't consulted about it in any way that I remember at all during that entire time as to its status or what could be done about it or what was to be done or anything, is my recollection of that. I supposed that everything was going along all right.

Q. That was your supposition?

A. Yes, from the fact that I didn't hear anything about it.

Q. I desire also, Mr. Cooke, to call your attention to subdivision (b) of defendants' Answer, on page 15 thereof, which reads as follows and which you set up as an affirmative defense in this action. This subdivision reads as follows: "That the \$20,000.00 cash required by Paragraph I of said Exhibit A, to be deposited by the said Charles W. Mapes, Jr. and plaintiff, P. G. Denson, as a guaranty of their good faith, was not deposited contemporaneously with the making of said Exhibit A or at all, except that \$10,000.00 was deposited on or about October 4, 1945, but the remaining

(Testimony of Mr. H. R. Cooke.)

\$10,000.00 has never been deposited or tendered to said defendant, Mrs. Charles W. Mapes." Now with respect to that allegation, at the time of the signing of that agreement by all the parties on October 4, 1945, did you, on behalf of Mrs. Mapes or did you hear her, on her own behalf, make a demand upon Charles W. Mapes to pay that \$10,000.00? [741]

A. No.

Q. From the time of the execution of this agreement on October 4, 1945, have you notified Mr. Denson, the plaintiff in this action that the \$10,000.00 had not been deposited by Charles W. Mapes?

A. No, there was no notice that it hadn't been deposited by Charles W. Mapes, but there was a notice it hadn't been deposited.

Q. What?

A. I say he was notified it had not been deposited, the remaining \$10,000.00 had not been deposited, as I remember.

Q. I just don't understand your answer.

A. Well, I had to answer the question the way you put it.

Q. Will you repeat your answer?

A. I did not notify him that Charles W. Mapes had not made a deposit.

Q. I don't know what you mean by that. Maybe the Court does, but I don't.

A. Just what I say, that the ten thousand dollars had not been put up.

(Testimony of Mr. H. R. Cooke.)

Q. My question was that you had never notified Mr. Denson up to the present moment? Let me withdraw that. You have never notified Mr. Denson, until his attorneys were served with the copy of the answer, that the ten thousand dollars had not been deposited by Mr. Mapes? [742]

A. Well, that isn't any notice it hadn't been deposited by him.

Q. May I have an answer to the question?

A. Read the question and I will see what I can do. I will answer it the best I can.

(Question read.)

A. No, I never notified him that Mr. Mapes had not deposited the ten thousand dollars.

Q. You said, Mr. Cooke, that no plans and specifications had been prepared or were available to attach to the agreement?

A. Well, I didn't know of them.

Q. You didn't know of them?

A. I didn't know of them. I never saw them and didn't think there were any at that time.

Q. Do you know when they first became available?

A. No, I do not. I did not have much to do with that phase of it. Just a few little questions that came up from time to time that I was consulted on. I didn't work with the building, the progress of it. The architect, etc., did that.

Q. But Mrs. Mapes never sought your legal

(Testimony of Mr. H. R. Cooke.)

advice, as I understand it, after this agreement was entered into, until when?

A. Well, I am speaking from recollection again, I think I am correct. I do not think it was until along in April. It may have been around the first and again it may have been the 10th. It appears at the time there had been some sharp differences [743] arising between Mr. Mapes and Mr. Denson. That may have been after the 10th. The testimony can tell here, but it was around the fore part of April, I think was the first time I heard anything in regard to that agreement between them, Mr. Denson and Mr. Mapes and Mrs. Mapes.

Q. Of course you mean the first part of April 1946?

A. Yes.

Mr. Platt: I think that is all, your Honor.

The Court: Anything you want to say in the nature of cross-examination, Mr. Cooke?

Mr. Cooke: Well, I wanted to say—I was afraid Mr. Platt would say that it is not responsive, but I want to say in respect to this ten thousand dollar deposit, if that question had been brought up in my mind I would figure that was an affair between Charles Mapes, Jr., and Mr. Denson, with which I hadn't anything to do.

Mr. Platt: Of course, if I may be permitted to ask you another question, Mr. Cooke?

Mr. Cooke: Yes.

Q. That is why I have been a little astonished

(Testimony of Mr. H. R. Cooke.)

that the failure of Mr. Mapes to put up the ten thousand dollars was set up by you as an affirmative defense in this case.

A. Maybe I can relieve your astonishment by saying that my theory of it was that was a joint obligation between those two people; so far as Mrs. Mapes was concerned, it didn't matter [744] from where it came. She had a claim against the two, whether 70 per cent by one and 30 per cent by the other, or equal, absolutely makes no difference. Mr. Denson was under legal obligation. If he wanted to enforce Mr. Mapes to put up one-half, he didn't have to look to Mrs. Mapes, he had to look to his co-partner for redress against him. That was the view I took of it and the view I have of it now.

Mr. Platt: Well, I was about to ask you a question concerning your construction of the contract, but I think that is a matter of law and opinion, your Honor. That is all.

Mr. Cooke: You ought to know what my opinion is.

Mr. Platt: Now, if the Court please, we have quite a number of depositions which we would like to offer in evidence. If the Court please, we offer in evidence the deposition of Mr. Leon Huckins, a witness on behalf of the plaintiff.

Mr. Cooke: We have some objections, your Honor, but I think they will go to specific questions taken pursuant to stipulation. [745]

DEPOSITION OF LEON HUCKINS

Direct Examination

1. Q. Please state your full name, present address and occupation or profession.
 - A. Leon Wood Huckins, Dallas, Texas, 4726 Coles Manor Place; retired from business.
2. Q. Have you ever been engaged in the hotel business, and if so, in what capacity. Please answer fully.
 - A. Yes. The four Huckins brothers have been in the hotel business all their lives and at one time owned or operated twelve hotels. Personally, I have managed the following hotels: Huckins Hotel, Sedalia, Missouri; Caddo Hotel, Shreveport, Louisiana; Huckins Hotel, Oklahoma City, Oklahoma; Westbrook Hotel, Fort Worth, Texas; Sir Francis Drake Hotel, San Francisco, California. I might add I purchased the property at the corner of Sutter and Powell streets in San Francisco in 1927, selected the architect and let building contract with Lindgren and Swinerton, who built the Sir Francis Drake, costing between 3 and 4 million dollars. The above hotel was financed without any expense to the corporation. In other words, we had 100 cent dollars for construction. I managed the Sir Francis Drake from 1928 to 1938, 10 years, and in 1938 the Huckins interest sold out to the Hilton Hotel Co.

(Deposition of Leon Huckins.)

3. Q. Are you acquainted with the plaintiff in the action, P. G. Denson, and if so, how long have you known him?

A. Yes, I am acquainted with Mr. P. G. Denson; have known him [746] for about 18 years.

4. Q. State whether you visited in company with the plaintiff, P. G. Denson, Mrs. Irene Gladys Mapes of Reno, Nevada, one of the above-named defendants, and if so, when, where and upon how many occasions?

A. Yes, in 1940 with Mr. Denson I made six or eight trips to Reno and discussed with Mrs. Mapes the building of a hotel on the old Post Office site. Mr. Denson and I suggested plans for all floors and it is rather singular that our plans are practically the same as the present plans—that is, we located stores on the two streets, lobby in rear of stores and coffee shop adjacent to lobby near river. We suggested having some apartments in addition to hotel rooms and the top floor for catering, gaming, etc. We secured the services of Douglas Stone, a prominent San Francisco architect. Mr. Stone drew several floor plans and exterior elevations and we made two or more trips to Reno with Mr. Stone to discuss plans, etc., with Mrs. Mapes. We also discussed with Mrs. Mapes the financing of the hotel. It was understood Denson and Huckins

(Deposition of Leon Huckins.)

were to lease the entire building with the exception of the stores, also we were to furnish the hotel and give chattel mortgage on furniture to secure our lease. Mrs. Mapes made one or two trips to San Francisco to discuss project with us. We were financially able to furnish hotel unincumbered and we also spent considerable time and money on the Reno project; all this in the year 1940. The hotel was to be leased to Denson and Huckins, each owning 50% of corporation.

5. Q. Please state who were——

Mr. Cooke: (Interrupting) Just a moment, Mr. Platt, until I interpose a motion to strike. The defendants move to strike all of the answer, directing your Honor to interrogatory No. 4, commencing with the words: "Mr. Denson and I suggested plans for all floors and it is rather singular that our plans are practically the same as the present plans * * *" down to the conclusion of the answer given by the witness, which includes the statement that he was financially able to finance the hotel unincumbered and so on, as to not being responsive to the question. The question was: "State whether you visited in company with the plaintiff, P. G. Denson, Mrs. Irene Gladys Mapes of Reno, Nevada, one of the above-named defendants, and if so, when, where and upon how many occasions?" Our position is that that answer is entirely unresponsive, that the

(Deposition of Leon Huckins.)

question calls for a statement as to when, where, and on how many occasions he visited with Mrs. Mapes and in addition to answering about 6 or 8 visits, he goes on, tell about a matter here that has nothing whatever to do with the question and is totally unresponsive.

The Court: Were the defendants represented at the taking of that deposition? [748]

Mr. Cooke: On that deposition no; by interrogatories by stipulation. They sent direct interrogatories to us and we then sent cross-interrogatories.

The Court: The thought occurred to me, there are so many things that appear in taking of depositions. For instance, attorney examining a witness on taking deposition might reason an answer to a question that might not be responsive and still no objection will be made at the time would not, of course, ask any other question to bring out the same matter the first question was on. I don't know whether that situation arises here or not.

Mr. Sinai: The stipulation provided that plaintiff give defendants 26 days' notice of taking of any deposition and in each instance a notice was properly given to the other side, so that they could have a representative present at the time of taking of the depositions. In fact, aside from the letter notice I talked to Mr. Cooke on one occasion and told him of the taking of the deposition on a certain date.

The Court: I can see where the testimony of the witness might not be, or the presentation of his

(Deposition of Leon Huckins.)

testimony, might be, curtailed by such a situation as we have here. An attorney sitting and hearing an answer, portions or all of which may not be responsive, would be lulled into a sort of [749] feeling that he had this matter that he wanted to have brought out and would have been brought out by subsequent question had somebody been present and made an objection. That is just the thought that occurred to me.

Mr. Cooke: The stipulation, your Honor, is the regular stereotyped stipulation.

The Court: At the time this was taken, was the plaintiff represented?

Mr. Platt: No, I think it was taken before a notary public.

Mr. Cooke: We were not present and I do not think the plaintiffs had any lawyer present. The point I am trying to make further, your Honor, if any of us had been present, we would have had the right to change or add to the questions, but the stipulation identified the interrogatories direct and crossed that might be asked and none other could be asked at the hearing of the taking of the deposition unless both parties acquiesced.

The Court: Please read the question and answer again, Mr. Cooke.

Mr. Cooke: The question is: "State whether you visited in company with the plaintiff, P. G. Denson, Mrs. Irene Gladys Mapes of Reno, Nevada, one of the above-named defendants, and if so, when, where

(Deposition of Leon Huckins.)

and upon how many occasions?" [750] That is the question. The first part of the answer, which is not objected to, is, he says: "Yes, in 1940 with Mr. Denson I made six or eight trips to Reno and discussed with Mrs. Mapes the building of a hotel on the old Post Office site." That, of course, is strictly responsive, but he goes on in considerable detail here.

The Court: I think it will go out from that point.

Mr. Platt: Your Honor please, just a moment, I would like to suggest I think it is a little unfair to the Court to put up an objection like this in the face of the conditions that your Honor has stated. What I am quite willing to do is to agree with counsel now that these depositions be read and if your Honor finds anything in them that is immaterial or improper or not responsive to a question and you desire to disregard it, it is all right with me, after all we are trying this case before the Court and I have the utmost confidence in your Honor's discrimination and judgment. I am ready and willing to enter into such an understanding with Mr. Cooke concerning all these depositions.

Mr. Cooke: I do not doubt that counsel would be, but I would state right here that we have a lot of objections to these depositions here besides the one of unresponsiveness and as to the stipulation, I realize that your Honor will separate the wheat from the chaff when we come to final decision of the

(Deposition of Leon Huckins.)

matter and I am not greatly concerned about a case tried before any judge that the question of admissibility, etc., is material, but I have had some painful experiences, and I suppose you have, that when you get into a higher court and something wrong occurs and it shows it occurred before the court and you don't object in the court below, you are bound by it. That is an unsatisfactory position for counsel to be in when he gets up in the upper court if the case should ultimately land there. I want to save the record. If this was a court of final appeal, no further, I would be disposed to agree with counsel's stipulation, but that is not the case. I want to stand squarely on the terms of the stipulation.

The Court: I think it will have to be considered that that part of the answer is not responsive.

Mr. Platt: Yes, your Honor, it is volunteered.

The Court: Just state for the record to show what portion is stricken.

Mr. Cooke: Yes, I tried to identify it as that portion of the answer following the words: " * * * and discussed with Mrs. Mapes the building of a hotel on the old Post Office site," and begins with the sentence, "Mr. Denson and I suggested plans for all floors and it is rather singular that our plans are practically the same as the present plans * * *"

Mr. Platt: (Interrupting) Well, just as we go along—"Mr. Denson and I suggested plans * * *" I think that is a part of the conversation. Now

(Deposition of Leon Huckins.)

his comment about that I [752] think would have to go out.

The Court: Was he asked for conversation? He was asked merely how many times, what was the occasion.

Mr. Cooke: “* * * when, where and upon how many occasions.” “State whether you visited in company with the plaintiff, P. G. Denson, Mrs. Irene Gladys Mapes of Reno, Nevada, one of the above-named defendants, and if so, when, where and upon how many occasions?”

The Court: There is no conversation called for.

Mr. Cooke: That will take in, as I view it, the balance of the answer going down to where he said: “We were financially able to furnish hotel unencumbered and we also spent considerable time and money on the Reno project; all this was in the year 1940—the hotel was to be leased to Denson and Huckins, each owning 50% of corporation.” That is the conclusion of it.

Mr. Platt: Your Honor, question No. 5. (Continuing with deposition).

Q. Please state who were present at these visits or interviews, and what as nearly as you recall, with as much detail as possible, was said by any and all of them.

The Court: Was there an answer to that?

Mr. Platt: Then he said:

Q. Most of question has been answered in question 4. [753]

(Deposition of Leon Huckins.)

The Court: Then we will let answer 4 stand as his answer to that question, so it puts it right back in again.

Mr. Platt: That is right.

The Court: Let that clearly appear in the record that that stricken portion of the previous answer stands and is to be considered as a portion of the answer to interrogatory No. 5. So it is in and out.

(Continuing with deposition.)

A. Most of question has been answered in question 4. Mrs. Mapes, Mr. Denson and I, were present at all meetings, and Mr. Stone was present at two or three conferences.

Mrs. Mapes seemed quite anxious to lease hotel to us, but was not satisfied with Mr. Stone's plans—yet, her present architect is using practically the same layout of stores, public rooms, bedrooms, apartments and sky room, etc.

Mr. Cooke: We move to strike that portion of the answer to direct interrogatory No. 5 herewith as follows: "Mrs. Mapes seemed quite anxious to lease hotel to us but was not satisfied with Mr. Stone's plans—yet, her present architect is using practically the same layout of stores, public rooms, bedrooms, apartments and sky room, etc.," on the ground it is not responsive to the question, which was: "Please state who were present at these visits or interviews, and what [754] as nearly as you recall, with as much detail as possible, was said by any and all of them."

(Deposition of Leon Huckins.)

The Court: I think that motion is good as to that portion of it beginning with the word "yet." I think the other portion of it was perhaps his version of what took place in the way of conversation.

Mr. Platt: We have no objection to that part being stricken.

The Court: The motion will be granted in part, to the effect that that part beginning with the word "yet" to conclusion of the answer be stricken.

Mr. Cooke: We except to the ruling allowing in: "Mrs. Mapes seemed quite anxious to lease hotel to us, but was not satisfied with Mr. Stone's plans * * *".

The Court: I am just trying to explain my thought on the thing. He is asked to narrate a conversation and as a lay witness is inclined to do, does not clearly understand the distinction between conclusion and statement of fact and he says she seemed to be in favor of or against this and that. Isn't that, their intention and purpose, the same as saying she expressed desirability or the effect of the conversation? [755]

Mr. Cooke: That is the witness's conclusion.

The Court: The motion will stand as heretofore disposed, granted in part, and you will have an exception to the ruling.

(Continuing with deposition.)

6. Q. Are you acquainted with the reputation of the plaintiff, P. G. Denson, as to his integrity and his capabilities as a hotel man

(Deposition of Leon Huckins.)

and manager, and with his financial responsibilities?

Mr. Cooke: I wish to object to the evidence sought to be elicited by that question upon the ground that it is not a matter to be established by reputation and that it is not in issue in this case as to whether Mr. Denson is a capable hotel man or wasn't. No attack has been made upon Mr. Denson as a hotel man.

The Court: Objection will be overruled.

(Continuing with deposition.)

A. In regard to Mr. Denson's reputation as a hotel man, will say that he is far above the average—very efficient and a practical business man, also knows how to meet the public, a good mixer with his guests and makes friends. Has the ability of selecting capable men for his assistants, pays top salaries and always has an excellent chef and serves the very best of foods.

Mr. Cooke: I wish to add to my objection now that [756] the evidence sought to be elicited is incompetent and immaterial, that it does not go to his general reputation, simply what the witness considers to be his reputation. Your Honor will note that the question was: "Are you acquainted with the reputation of the plaintiff, P. G. Denson, as to his integrity and capabilities as a hotel man and manager and with his financial responsibilities?"

(Deposition of Leon Huckins.)

In addition to the objection that it calls for a matter that is not susceptible to being established by reputation, either general or otherwise, we add the special and specific objection that the witness is not not qualified to testify in regard to Mr. Denson's reputation because he has not said that he knows what his general reputation is in the locality or community where he had operated or where he resides. I think that that is rather serious, your Honor, in this, that in all of these cases of reputation, where it is permitted at all, both in civil and criminal law, it is the general reputation and not what a witness might think his reputation is. In answer to the question what his reputation is, he might think almost anything constitutes reputation, but if he is asked to state if he knows what the general reputation is, then that presents quite a different figure. Our Supreme Court has held in one case that the question must embrace that qualification of general reputation and to simply ask if the witness knows his reputation is not sufficient to elicit any testimony, no proper foundation to [757] elicit any testimony as to what his reputation is. The whole subject of reputation is part of the case and can't be brought in under question that simply calls for reputation, as counter-distinguished from general reputation.

The Court: What are some of the preliminary questions in regard to the extent of this witness's acquaintance with Mr. Denson?

(Deposition of Leon Huckins.)

Mr. Platt: We have called this witness, your Honor, as an expert hotel man. He is giving his opinion as an expert. Your Honor will recall the preliminary questions brought forth answers from the witness that he owned and operated many many hotels and those hotels were all set out in his answer and named, the last one being the Sir Francis Drake in San Francisco, and we have qualified him, we think, as an expert hotel man.

The Court: That is true, but what did he say in his deposition as to the extent of his acquaintance with Mr. Denson?

Mr. Platt: Has know him for 18 years. Question 3. "Are you acquainted with the plaintiff in the action, P. G. Denson, and if so, how long have you known him? A. Yes, I am acquainted with Mr. P. G. Denson; have known him for about 18 years." Now your Honor will recall probably that we allege in our complaint, our amended complaint, that Mr. Denson is able, qualified, willing and has been at all times, to conform [758] with this contract. Now they deny these allegations and we must show his ability and his qualifications in the face of that denial and we are trying to show them.

The Court: Now let me get the question and answer that is objected to here again please.

Mr. Platt: This is question No. 6:

Q. Are you acquainted with the reputation of the plaintiff, P. G. Denson, as to his integrity and his capabilities as a hotel man and manager, and with his financial responsibilities?

(Deposition of Leon Huckins.)

A. In regard to Mr. Denson's reputation as a hotel man, will say that he is far above the average—very efficient and a practical business man, also knows how to meet the public, a good mixer with his guests and makes friends. Has the ability of selecting capable men for his assistants, pays top salaries and always has an excellent chef and serves the very best of foods.

Mr. Platt: I have, of course, not read all the answer yet. Counsel objected.

The Court: I want to ask Mr. Cooke a question there. Suppose that question was in this respect: "Have you an opinion as to Mr. Denson's integrity and ability as a hotel man?" Would that be objectionable?

Mr. Cooke: It would, your Honor, in my view. Question of opinion is not legal evidence. [759]

The Court: As an expert in the hotel business. I will overrule the objection. The answer may stand.

Mr. Platt: Continuing with the answer:

Regarding his character—Mr. Denson has a very lovable disposition and is a man of fine character—prince of a fellow; born in Georgia, is a real Southerner, and I venture to say has more sincere friends than any other hotel man in California.

Mr. Denson's reputation is A-1 and as to his integrity, his word is as good as his bond.

His financial condition in 1940 was more than ample to furnish the hotel and now, in 1946, I know

(Deposition of Leon Huckins.)

he is financially able to carry out all obligations in regard to his contract with Mrs. Mapes; in fact, he can furnish the entire hotel and in my judgment Reno is lucky in securing a man like Mr. Denson. Mr. Denson is capable and should have complete charge of all management; in other words, he is an excellent and efficient operator and if it could be arranged it would simplify matters to have only one manager.

Mr. Cooke: We move to strike all of the answer that was objected to for the reasons stated in the objection, and on the further ground that the question of Mr. Denson's capabilities is not raised by the pleadings in the case, his reputation or his standing is not attacked in any way by the [760] pleadings, therefore it would be irrelevant and immaterial. That there is no proper foundation laid. That the testimony of the witness goes far outside of the question of reputation, either general or otherwise, in that he is offering advice to the Court as to who should be the manager of the business, etc.

The Court: Motion denied.

(Continuing with deposition.)

7. Q. If your answer to the last question be in the affirmative, please state what his reputation in this respect is and upon what do you base it. Please answer with as much detail as possible.

A. Question No. 7 has been fully answered in my answer to question No. 6—as stated

(Deposition of Leon Huckins.)

above, I have known Mr. Denson for 18 years—so feel that I am qualified to state the above facts.

Mr. Cooke: I move to strike the answer on all the grounds heretofore stated and on the further ground that that shows that he is basing his testimony on his own personal knowledge and personal relations with Mr. Denson and not talking about reputation at all.

The Court: Objection overruled and motion denied.

Mr. Platt: Signed Leon Huckins. Subscribed and sworn to. I suppose, your Honor, that it might be marked properly as an exhibit.

The Court: Is it necessary to offer it in evidence?

Mr. Platt: I always do it. [761]

The Court: Well, it will be considered in evidence and marked as exhibit next in order, "R."

Mr. Platt: We next offer the deposition of Miss Ruth Mason, witness on behalf of the plaintiff:

DEPOSITION OF RUTH MASON

Questions and answers Nos. 1 to 6, inclusive, read without objection.

7. Q. Please state with as much detail as possible, as nearly as you recall, what was said and done by you, and each and all of the parties present at that meeting.

(Deposition of Ruth Mason.)

Mr. Cooke: That is objected to the evidence sought to be elicited by direct interrogatory No. 7 on the ground it is irrelevant and immaterial, has no bearing on the question of construction of the contract as of September 24, 1945; that it would tend to vary the terms of a written document.

The Court: Objection will be overruled.

(Continuing with deposition.)

A. At Mr. Denson's request, seconded by Mr. Mapes, I showed and explained by drawings and plans for the new hotel, working from the ground floor throughout to the room floors, and then to the sky room, or roof. There was much discussion and interest displayed, several modifications suggested on the original plans, some omissions and changes in the kitchen layout. The conference took about three hours. At about 12:15 or so, Mr. Mapes asked us all to luncheon with him "to continue [762] the conference later." We all, except Mr. Slocum, who had an appointment out of town, went to lunch together and returned about 1:40 or so. Then Mr. Mapes and Mr. Moorehead said they wouldn't go on with the discussion of the roof, or sky room, as "they had other plans and would go into those with Mr. Denson." However, Mr. Mapes expressed his appreciation of the drawings, and kept a copy of the coffee

(Deposition of Ruth Mason.)

shop and kitchen layout. Mr. Mapes then drove Mr. Hart, Mr. Denson and me back to the Sir Francis Drake Hotel in San Francisco, and took the package of plans and drawings up to my room for me.

8. Q. When did the meeting convene and when did it adjourn?

A. Convened approximately 9:30 and adjourned approximately 12:15. Then reconvened at approximately 1:40 and adjourned within about ten minutes.

9. Q. State whether there was any further discussion after the adjournment of the meeting with any of the parties present and within the hearing of Charles W. Mapes, Jr., one of the defendants herein, and if so, where did the discussion take place, and to the best of your recollection what was said with respect to the business matters involved.

Mr. Cooke: The defendants object to the evidence sought to be solicited by direct interrogatory No. 9, on the ground that it is irrelevant and immaterial upon any issue in this case, hasn't any tendency to establish whether this contract is one that your Honor can decree specific performance [763] of; that its sole tendency would be to vary the terms of the written agreement by conversation and talk had on things of which the witness is asked to testify.

(Deposition of Ruth Mason.)

The Court: What is the date?

Mr. Platt: April 1st.

The Court: Will you read that question again?

(Question read.)

The Court: Objection overruled. Answer the question.

Mr. Platt: The answer is?

A. See No. 7 herewith.

Mr. Platt: The previous answer. Signed Ruth R. Mason and sworn to.

The Court: That will be admitted in evidence as plaintiff's next in order, "S."

Mr. Platt: We next offer in evidence, if the Court please, the deposition of

DOUGLAS STONE

May we have a short recess, your Honor?

(Short recess.)

The Court: We were dealing with the deposition of the witness Stone.

Mr. Cooke: In regard to that, we ask to suppress because cross-interrogatories seem not to have been made a part of the deposition, although they were served upon counsel, but the interrogatory that we had is not of great importance, [764] and so far as the motion to suppress the deposition as a whole is concerned for failure of the cross-interrogatories being attached, we will not make that——

(Deposition of Douglas Stone.)

Mr. Platt: (Interrupting) May I interrupt? This is the cross-interrogatory.

Mr. Cooke: I thought your asociate said you didn't have it.

Mr. Platt: No, I told you to look and see if we did.

Mr. Cooke: I was going to add, however, that we have objections to specific interrogatories to take up as we go along.

The Court: Proceed.

Mr. Platt: We now submit and offer in evidence, if the Court please, the deposition of Douglas Stone.

Questions and answers Nos. 1 through 7, inclusive, read without objection.

8. Q. Please state whether or not you discussed the construction and operation of a hotel on the Mapes property, known as the old post office site on Virginia street, in Reno, Nevada, with Mrs. Mapes some time during February or March, 1940.

Mr. Cooke: We wish to interpose objection to the evidence sought to be elicited by direct interrogatory No. 8 on the ground it relates to some time during the months of February and March, 1940, some five years before the agreement [765] that is in controversy here was signed. That it would at most be in the nature of preliminary negotiations and conversations, discussions, had five years prior

(Deposition of Douglas Stone.)

to the making of the agreement, and is incompetent and irrelevant by reason of the principle of law that all of those things are deemed to have been merged into the written agreement. We object to it on the further ground if it had any fundamental effect in the case at all it would be in the nature of varying the terms of the written agreement, which can not, in any event, be varied by things prior to the making and could not in respect be varied by that. No foundation for any question for any question of mistake or fraud involved in the case.

The Court: There has been some testimony admitted of an early meeting in 1940, but I don't recollect that there was any great amount of testimony as to what took place at that meeting. It does strike me it is somewhat remote, Mr. Platt.

Mr. Platt: Well, one of the purposes of it, if the Court please, is to show the connection of Mr. Denson in early negotiations and arrangements, which eventually led into this contract and Mr. Denson testified about the early meeting in 1940 and Mrs. Mapes testified concerning it. And of course there is another very significant point, and that is that Mrs. Mapes from 1940, if we establish this date, up to and including [766] the 24th day of September, 1945, when she herself alone signed this agreement, had all of that period of time to investigate Mr. Denson, his qualifications, etc., and we are trying to show, through further evidence, that the meeting, or those meetings, in 1940 actually what

(Deposition of Douglas Stone.)

took place with reference to the construction of a hotel by her.

Mr. Cooke. If the Court please, there is an awful wide gulf between the contention, it seems, and the legal position of counsel in this case. We have insisted from the start that the only question to determine here is the question of whether the document of September 24, 1945, is one that a court of equity can decree specific performance of and that must be determined upon the face of the document. Your Honor has allowed evidence in with the idea of showing perhaps that there might have been a waiver by the parties as to the time element, but obviously, it seems to me, that even for that purpose evidence as to what transpired five years before there was any contract at all in writing, can not be admitted for any purpose showing waiver. In other words, if there is any waiver, arrangement made, that would tend to the dignity of a legal waiver, it would have to be after the contract was made. Otherwise, to go back five or forty years, it seems to me, and ask that this, that and the other may be admissible as determining the matter of waiver to an agreement that wasn't brought into existence until several years afterwards, that [767] would be objectionable. The question of Mr. Denson's qualifications—counsel feel that it would be important that we knew of his qualifications in 1940 or at least had ample time to investigate. There is no claim, no contention, I have insisted on that so

(Deposition of Douglas Stone.)

many times, that Mr. Denson is not a competent hotel man. I don't know anything about it, but it is not a question the Court has to do with. We signed up this agreement and if he is a competent hotel man, all right. If he is absolutely incompetent, it wouldn't be a defense with us because we signed. If we found out Mr. Denson was absolutely incompetent to run the hotel, we can't say that this man we signed up with on September 24, 1945, proved to be incompetent and therefore we do not feel we are bound by the agreement. That wouldn't be a measure. The court would throw that out without hesitancy. Whether he had 15 or 40 years' experience makes no difference and makes no difference whether we knew 15 years beforehand. There is no fraud or mistake pleaded. It is encumbering the record and getting off on the issues and injecting extraneous matters that would simply confuse, it seems to me. That is frankly the objection.

Mr. Platt: The thought in my mind, if your Honor will permit—when we go back to 1940, and I propose to argue this to your Honor on the merits—when we go back to 1940 and establish relations, the cordial relations, between Mrs. Mapes and Mr. Denson, together with tentative business suggestions [768] beginning way back in 1940, and then when we consider from the evidence that all of this thing was renewed in 1944 with Mr. Denson and then when we review the evidence, not only as to business arrangements leading up to the contract

(Deposition of Douglas Stone.)

and subsequent to it, but we go back clear to 1940 and show the social relations, the friendly relations, the implied confidence which Mrs. Mapes had in Mr. Denson, then we are leaning very heavily in support of our contention that because of this confidence and because of these social relations and because of the friendly relations there was a waiver of all these expressed time limitations. It all has a bearing upon it and I propose to argue that to your Honor as a matter of implication.

The Court: I will overrule the objection and admit the testimony. I mean admit the answer to the question.

(Continuing deposition.)

A. Yes.

9. Q. If your answer to the previous question is in the affirmative, please state who was with you at the time you discussed the matter of the construction and operation of a hotel on the property aforesaid.

Mr. Cooke: Same objection as interposed to direct interrogatory No. 8.

The Court: Objection overruled. [769]

(Continuing with deposition.)

A. P. G. Denson, Plaintiff, Sid Barash, hotel broker, and Lee Huckins, hotel operator.

10. Q. If you have already testified that you had a conversation or conversations with Mrs. Mapes, please testify what that conversa-

(Deposition of Douglas Stone.)

tion or conversations were, to the best of your recollection.

Mr. Cooke: Same objection as interposed to direct interrogatory No. 8 of this same witness.

The Court: Same ruling.

(Continuing with deposition.)

A. The conversation was in effect that I might be employed as the architect for the construction of the hotel upon the cite above referred to and Mr. Barash might be interested in financing, Mr. Huckins and Mr. Denson might be interested in the operation of the hotel as tenants in accord with the lease to be agreed to.

11. Q. Please state what conversation or conversations you had with Mrs. Mapes relative to the construction and operation of said proposed hotel and the drawing of plans by you for said proposed hotel, giving the number of conversations and when and where they occurred, and the persons present.

Mr. Cooke: We have the same objection as to direct interrogatory No. 8 to the same witness to this interrogatory and further objection that it appears to relate not to the [770] connection of Mr. Denson, but rather some proposed tentative, vague or indefinite arrangement between Mrs. Mapes and the witness.

(Deposition of Douglas Stone.)

The Court: If that is true, I don't see where that would be material. Read that question again please.

(Question read.)

Mr. Platt: Of course, if Mr. Denson wasn't there, we admit the question isn't proper.

The Court: Let us hear the answer, subject to a motion to strike, and see what it is.

(Continuing with deposition.)

A. I had three meetings with Mrs. Mapes including the first one above referred to. The second meeting was approximately several months later. At that meeting Mrs. Mapes and I were present and I think Mr. Denson and Mr. Huckins. I had prepared preliminary plans and I explained the plans to those present. There was a third meeting which took place several months after the second meeting. Mrs. Mapes and I were the only ones present. I presented to her revisions of the previously submitted plans and these were discussed.

Mr. Platt: I do not desire to press that issue.

The Court: The objection will be sustained and the answer may be considered as out.

Mr. Platt: I do not think it is definite—— [771]

Mr. Cooke: (Interrupting) For the sake of the record, I move to strike it, your Honor.

The Court: Motion granted.

(Continuing with deposition.)

(Deposition of Douglas Stone.)

12. Q. Please state why you went to Reno at that time and at whose request.

Mr. Cooke: Same objection as to direct interrogatory No. 8.

The Court: Let us hear the answer, subject to motion to strike.

A. I went to Reno on the foregoing occasions in the possible anticipation of being employed as architect for the construction of the hotel at the request of Mr. Denson and Mr. Huckins.

Mr. Cooke: We add to the objection of the answer because it is hearsay as to Mrs. Mapes.

The Court: That answer may be stricken.

(Continuing with deposition.)

13. Q. Please state whether or not Mr. P. G. Denson had any conversation or conversations with Mrs. Mapes regarding the construction, operation and financing of said proposed hotel.

Mr. Cooke: We interpose the same objection there that we did to direct interrogatory No. 8 of this same witness, and the further objection that this would be hearsay. It is simply asking the broad general question as to whether Denson had any conversation with Mrs. Mapes regarding this without [772] stating whether it was in his presence or anything about it.

(Deposition of Douglas Stone.)

Mr. Pratt: If the answer doesn't show he is present, I won't object to the motion to strike.

The Court: We will hear the answer.

A. Yes. Mr. Denson on the first occasion, and possibly the second, if he were present in accord with my recollection, had conversations with Mrs. Mapes relative to leasing the hotel, construction thereof and financing of the project.

The Court: That would show on its face, wouldn't it, that Mr. Denson was present at a conversation or meeting between Mrs. Mapes and Mr. Denson. Motion denied.

Mr. Cooke: Our objection is that the question goes to the interrogatory. The answer can't cure the objection to the interrogatory.

(Continuing with deposition.)

14. Q. If your answer to the previous question is in the affirmative, please state what said conversation or conversations consisted of, when and where they took place, and who were present.

Mr. Cooke: Same objection as to direct interrogatory No. 8 of the same witness. Add the further objection that the answer of the witness does not show the conversation he is testifying about was had with Mrs. Mapes. He has the qualification in there "if Mrs. Mapes was present." [773]

(Deposition of Douglas Stone.)

The Court: I think you can tell better by reading the answer.

Mr. Cooke: I refer back to the last answer to question No. 13.

Mr. Platt: The witness is doubtful about the second meeting but he is not doubtful about the first meeting.

A. The conversations with Mrs. Mapes and Mr. Denson were on the first two occasions above referred to, assuming that Mr. Denson was there on the second occasion which is my best recollection, and they consisted of discussions concerning leasing, construction and financing the hotel and Mr. Denson's experience as a hotel man.

The Court: The objection is overruled and motion denied.

(Continuing with deposition.)

15. Q. If negotiations were carried on in respect to the construction, operation, and financing of said proposed hotel, please state the conversations relating thereto, or, if you can not remember the conversations, please state the substance of said conversations and particularly the conversations or substance of conversations relating to the possible leasing and operation of that hotel by P. G. Denson, if such was the case.

Mr. Cooke: We interpose the same objection as

(Deposition of Douglas Stone.)

made to direct interrogatory No. 8 to the same witness, and upon the [774] further ground that the element of time, place, and persons present is not stated in the interrogatory No. 15 nor does it call for conversation that was had with Mrs. Mapes or in her presence.

The Court: I will hear the answer, subject to motion to strike.

A. I can not remember the details of the conversations but the subject matter is set forth in my previous answers.

The Court: Motion denied. We will take our recess until 2:00 o'clock.

Friday, December 13, 1946.

Afternoon Session—2:00 p.m.

Deposition of Douglas Stone resumed.

Mr. Platt: If the Court please, resuming the reading of the interrogatories to Douglas Stone, question 16 of the direct interrogatory is as follows:

16 Q. If negotiations continued for the construction, operation, and financing of said proposed hotel, please state how long said negotiations continued and the reason for the termination of said negotiations, if you know.

Mr. Cooke: The defendants object to the direct interrogatory No. 16 upon the same ground and for

(Deposition of Douglas Stone.)

the same reasons as stated in objection to No. 8 interrogatory to the same witness. [775]

The Court: Same ruling.

(Continuing deposition.)

A. My knowledge of negotiations and discussions is confined to the three meetings above referred to, and these three meetings were within a period of about six months from the first meeting. The first and second meetings were about two hours each and the third was about one hour. I do not know anything about termination of negotiations or the reason therefor.

17. Q. Please state how many times you came to Reno to discuss said proposed hotel with Mrs. Mapes.

Mr. Cooke: Same objection, your Honor, as stated to interrogatory No. 8.

The Court: Same ruling.

A. Three times.

(Continuing deposition.)

18. Q. Please state whether or not you prepared any drawings, pictures, and plans for Mrs. Mapes and if so, state when they were delivered to Mrs. Mapes by you.

Mr. Cooke: Same objection, your Honor, as stated to interrogatory No. 8 above.

The Court: I don't just see what relevancy any plans prepared by this witness would have. Objection will be sustained.

(Deposition of Douglas Stone.)

19. Q. Please state to the best of your ability the conversation that took place with Mrs. Mapes at the time you submitted [776] said drawings, pictures, and plans to her, stating where they were submitted and who was present.

Mr. Cooke: That is the same place referred to in the interrogatory preceding that your Honor sustained the objection.

Mr. Platt: The answer to that is, your Honor;

A. I can only remember the subject matter of the conversation and not details. The subject matter is set forth in my previous answers.

The Court: Inasmuch as the previous answers had not been stricken or objections sustained to the question that led to this response, it may stand.

(Continuing deposition.)

20. Q. Please state whether or not the name of the proposed hotel was designated on said drawings prepared by you and, if so, what the name was.

Mr. Cooke: Same objection, your Honor, irrelevant and immaterial.

The Court: Same ruling. I sustain the objection to that.

(Continuing deposition.)

21. Q. Please state how long you have known Mr. P. G. Denson, the plaintiff in this case.

A. Twelve years.

(Deposition of Douglas Stone.)

22. Q. Have you ever had any business dealings with P. G. Denson in respect to hotels as it relates to your profession?

A. Mr. Denson and Mr. Huckins employed me to design a motel to be constructed in Sacramento, California.

23. Q. Please state your experience as an architect and designer of hotels.

Mr. Cooke: That is objected to on the ground that the evidence sought to be elicited by that interrogatory is irrelevant and immaterial. As to what experience Mr. Douglas Stone had as an architect can not, so far as we understand, have bearing upon the question here as to whether this is a contract that your Honor can decree specific performance on.

Mr. Platt: Your Honor, the purpose of that question is to lay foundation on the part of the witness as to his experience.

The Court: Objection will be overruled.

A. I have been an architect for over twenty years steadily engaged in that profession. During that period my employees gradually grew from none to the present number of about twenty-five. I have designed hotels, as set forth in my previous answers. I have likewise designed and supervised construction of medical-dental buildings, general commercial buildings, homes (to a lesser degree) hospitals (privately owned

(Deposition of Douglas Stone.)

and for the Government), and structures of every character.

24. Q. From your business dealings with Mr. P. G. Denson, please state whether or not, in your opinion, he is a man well [778] qualified to pass upon the fitness of hotel plans from the standpoint of a practical hotel operator.

Mr. Cooke: The defendants object to the evidence sought to be elicited by direct interrogatory No. 24 upon the ground that the same is immaterial and irrelevant; that there is no issue as to whether Mr. Denson is qualified to pass upon the hotel plans; that there is no basis in the record or any expert testimony or opinion evidence; that the question of his ability, whether it is in issue or not, can not be established by the opinion of somebody else. It is established by facts and not by what some individual may think about it.

The Court: Objection overruled. You may answer the question.

A. I consider Mr. Denson well qualified from his hotel experience of many years to pass upon the fitness of hotel plans from the standpoint of the operator. His experience well qualifies him for such.

25. Q. From your experience, resulting from your business dealings with Mr. P. G. Denson, state whether or not, in your opinion, the

(Deposition of Douglas Stone.)

advice of Mr. P. G. Denson to an architect and builder of a hotel is valuable.

Mr. Cooke: We interpose the objection there that it is irrelevant and immaterial, calling for an opinion of another man as to whether Mr. Denson is competent to give advice to an architect or builder of a hotel; that that question [779] is not in issue in this case; that no point was made as to his ability or lack of ability. It is simply a question as to whether a certain document, to-wit, the contract of September 24, 1945, is susceptible of specific performance and this does not bear upon that issue at all.

The Court: It seems to me the question does little more than to refresh your mind what was already said by Mr. Denson in a previous question, but the objection will be overruled.

A. I consider from my experience with Mr. Denson that his advice to an architect and builder of hotels would be highly valuable as a result of his many years of hotel operation.

26. Q. If your answer to the previous question is in the affirmative, please state the reason therefor.

Mr. Cooke: Objected to on the same ground as previously stated to interrogatory preceding. On the further ground that it is not a subject of expert testimony.

The Court: Well, it seems to me his opinion is sufficient without the reasons for it. The objection will be sustained. We have already heard from him in regard to his qualifications and the qualifications of Mr. Denson.

No objection to cross-interrogatory.

The Court: Deposition admitted as Plaintiff's Exhibit "T". [780]

Deposition of
GEORGE T. THOMPSON

No objections to direct interrogatories and answers Nos. 1 through 6 inclusive.

7. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

Mr. Cooke: Defendants object to the direct interrogatory No. 7 and the evidence sought to be elicited thereby of the witness, George T. Thompson, on the ground that the same is immaterial. On the further ground that the question of Denson's hotel experience is not in issue in this case and has not any bearing on the matter whether or not the contract should be specifically performed.

The Court: Objection overruled. The answer may be read.

(Deposition of George T. Thompson.)

A. I have known Mr. Denson as operator of hotels during the past 15 years and I am positive that all of these hotels were operated successfully and that he is considered a good hotel operator among the hotel fraternity.

Mr. Cooke: Defendants object to the answer to direct interrogatory No. 7 on the ground it is not responsive to the question. The question is: "Do you know of your own knowledge whether Mr. Denson has had any hotel experience * * *", and the answer is, "I have known Mr. Denson as operator of [781] hotels during the past 15 years and I am positive that all of these hotels were operated successfully and that he is considered a good hotel operator among the hotel fraternity." The ground of my objection and motion is that he was asked to state of his own knowledge and here he is stating how Mr. Denson is considered among the hotel fraternity. He was asked to state of his own knowledge what he knew.

The Court: The objection will be overruled. I think that was his way of answering that question yes.

(Continuing deposition.)

8. Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

(Deposition of George T. Thompson.)

Mr. Cooke: That is objected to, if the Court please, on the ground that the matter of his reputation is irrelevant and immaterial, unless it embraces his general reputation; that if it is sought to qualify the witness to testify as to the subject of reputation in any way, it has to be in the form of a question calling for whether he knows the general reputation. Here it is simply the reputation, whatever the witness may consider constitutes reputation. The further objection is that the testimony sought to be elicited as to what his reputation is, whether general or otherwise, would be immaterial because it is not in issue in the case and hasn't anything to do with the question whether the contract should be specifically [782] enforced or not.

The Court: Wouldn't that question just mean this—assuming that this man is a hotel man, he has been connected with hotels for 25 years, the question is, "Do you know his reputation as a hotel man," addressed to a man the type of this witness, wouldn't that mean, "What is his general reputation among hotel people?" Wouldn't that mean that?

Mr. Cooke: No, I don't think so, I think the rule is very strict that more general areas in the country have invariably to be included.

The Court: The objection will be overruled.

A. Mr. Denson has been actively engaged in

(Deposition of George T. Thompson.)

the hotel business and also has been on the Board of Directors of the California State Hotel Association for a number of years. I consider him a man of ability and integrity and an efficient hotel operator.

Mr. Cooke: I move to strike the answer upon the ground it is not responsive. The question was as to whether he knew the reputation of Mr. Denson for ability, integrity and efficiency as a hotel man and operator and he had to qualify himself by stating yes or no, then go ahead and answer the question; if the answer was yes, then he could go ahead and state what that reputation is. [783]

The Court: If the witness was here on the stand, subject to another question here by counsel, I would sustain the objection. Under the circumstances, I will overrule the objection.

(Continuing deposition.)

9. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

A. Question 9 is answered by question 8.

Mr. Cooke: We object to the evidence sought to be elicited by that question upon the ground that he is not being asked as to his opinion. I mean he is not being asked as to what that reputation is, but he is asked if he knows what his reputation is, then he is asked what his opinion is. They are

(Deposition of George T. Thompson.)

asking for his own individual opinion. He has testified in a way about the reputation, now they are asking him here, if your answer to the question above as to his reputation is yes, then state what your opinion is. That evidence, of course, is irrelevant and immaterial, it is not responsive to the question. His individual opinion is of no fundamental value whatever. It is submitted by us that Mr. Denson's ability or lack of it is not a matter to be established by general reputation, but it certainly can't be established by the opinion of one man.

Mr. Platt: We are trying to establish it by the opinion of a lot of men.

Mr. Cooke: Well, we have just one here for the time being.

The Court: Objection will be overruled. It seems to me the other answer covers the whole situation.

(Continuing deposition.)

10. Q. Assuming that their is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent,

(Deposition of George T. Thompson.)

please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.

Mr. Cooke: To that the defendants interpose an objection that what the custom and practices are on the Pacific Coast is not shown. On the further ground that the custom and practices on the Pacific Coast are not shown to be the same as those obtaining in Reno, Nevada. It is objected to on the [785] further ground that it involves an ultimate question in the case for the Court to decide and which can not be decided for the Court by either this witness or any other number of witnesses; that the question of what constitutes an equitable contract is peculiarly and exclusively one for a Court or a judge who is competent to determine, one that by reason of his education or training is competent, whereas the layman is not competent; that the question involves, as I stated a moment ago, one of the ultimate questions in the case. If this agreement is not fair and equitable to both parties, then that of itself, regardless of other questions, would constitute good and sufficient grounds for dismissal of plaintiff's suit, he has no cause for equity at all,

(Deposition of George T. Thompson.)

so it is incumbent upon the plaintiff to prove that the contract is fair and equitable to the parties, but I submit that that great big important question can no more be proved by so-called expert upon hotels generally with only a part of the picture before him, in answering the general question as to whether the contract is fair and the court accept that as evidence of facts of equity of the contract, than if we call a bunch of lawyers and ask whether this was a good Nevada contract. If your Honor can take expert testimony on one ultimate question, it would seem no reason why it can't be taken on the whole case. It is obvious to me, at least, that this objection must be absolutely good for that one reason, that the Court can not take testimony of people as to whether it is fair or not and then make finding that the contract is fair because John Smith and Tom Dick and Harry testified.

The Court: Objection overruled.

A. The guaranteed rental on the hotel now under construction known as the Mapes Hotel is higher than the going rate at the present time.

Mr. Cooke: I am not through with my objection, your Honor.

The Court: I thought you were. Pardon me sir.

Mr. Cooke: I submit also that the question isn't sufficient foundation on the facts to call for any expert opinion testimony, that an expert opinion

(Deposition of George T. Thompson.)

would in no event be admissible in that there is only a part of the contract presented to the witness upon which he is supposed to base his answer and that simply goes to the percentage income and to the minimum rental, but there is, as your Honor knows, considerably more to the contract than that, and before either this witness or your Honor or anybody else can undertake to show that the contract is fair and equitable they naturally want the entire document, not only want but have to have it. For your Honor to say any evidence that page 3 of the contract is fair and equitable, that being the only one referred to and shown, wouldn't get us anywhere in the final decision of the case because it is the whole contract that must be fair and [787] equitable and not only one page.

The Court: Objection is overruled and the answer may be read.

Mr. Platt: I think I did read it, your Honor.

(Answer read.)

Mr. Cooke: I move to strike the answer for all and singular the reasons stated in the objection.

The Court: Motion denied.

Cross-Interrogatories

Read down through (d) under question 2.

Mr. Cooke: The witness has not answered the question. I asked to have him break it down and state how much he collected for insurance, how much for taxes, and he makes a general answer

(Deposition of George T. Thompson.)

that it is answered above—\$20,000.00 a year covers the payments on upkeep, insurance and taxes,” those three things, but he does not state how much for upkeep, how much for insurance, and how much for taxes, and we ask that his testimony on direct given on the subject of qualifications, etc., be suppressed by reason of his failure and refusal to answer on cross-examination the questions that were asked him.

The Court: How long since that deposition was returned to the court?

Mr. Platt: The 26th.

The Court: Do you want to take a further deposition? I will allow you to do it. If you want to take [788] a further deposition of this gentleman to get those figures, you will be permitted to do so.

Mr. Cooke: That is our motion to your Honor.

The Court: Motion denied.

The Court: Who do you mean to further take his deposition?

The Court: If you are not satisfied with his answers given and did not have time to take further deposition after receipt of this deposition by the clerk of the court, the Court will grant time to take a further deposition if you so desire, but will deny your motion to suppress.

Mr. Cooke: Well, we submit the motion.

The Court: It is denied.

Mr. Cooke: All of these depositions came in, I think, within the last few days.

The Court: However, I will try to remedy that

(Deposition of George T. Thompson.)

situation by giving you all the time you might need to take further depositions.

Mr. Cooke: I would like the record to show what date this came in.

Mr. Sinai: December 2nd. Mailed from San Francisco November 30th and written on top "Lodged December 2, 1946."

(Mr. Cooke reads balance of cross-interrogatories without objection by plaintiff's counsel.) [789]

(Reads from deposition.)

3. Q. The attached statement mentioned in said direct interrogatory No. 10 provides that if the percentage of gross receipts shall not equal monthly \$2083.33 then the second parties (lessees) shall make up and pay to the first party the deficiency on any of the four classifications mentioned in said statement. In your answer to said direct interrogatory which of the two minimum rental provisions mentioned in said statement did you use in reaching your conclusion?

A. My understanding is that the amount of \$2083.33 per month was made up by the figures of \$600.00 from the coffee shop, kitchen and dining room, \$1,000.00 from the cocktail lounge, \$333.33 from the sky room and \$150.00 from the banquet room.

Mr. Cooke: I move to strike that answer on

(Deposition of George T. Thompson.)

the ground it is not responsive to the question. He was asked which of the two minimum rental provisions mentioned in said statement he used in reaching his conclusion and he says that he reached his conclusions on the percentage one only, not to the other one at the bottom of the page that is exhibited to him when he had this deposition prepared. That is the one where the minimum is determined by the amount for upkeep and insurance and borrowed money and the amortization. Your Honor will recall that there is a paragraph that in any event an amount sufficient to cover those items must be paid and the cross-examination or interrogatory was seeking to determine [790] from him whether he used that basis of finding the minimum or used the percentage basis which occurs in the preceding paragraph, and he does not answer.

The Court: From a reasonable construction of his answers could you determine which he used?

Mr. Platt: Well, he says himself he used only the preceding paragraph, and he does not answer. Honor. (Question 3 and answer read.) That is merely repeating the percentage classes. He made no reference whatever in regard to the question as to minimum determined by cost of insurance, upkeep, etc.

The Court: Wouldn't a fair answer be that it was the percentage plan instead of the other?

Mr. Cooke: I asked him to state which one.

The Court: It seems to me he has answer it by indicating how he arrived at it. Motion denied.

Deposition is admitted in evidence as Plaintiff's Exhibit "U."

Mr. Platt: We offer in evidence, if the Court please, the deposition of Harvey M. Toy.

Deposition of
HARVEY M. TOY
Direct Interrogatories

Interrogatories and answers Nos. 1 through No. 4 inclusive read without objection. [791]

5. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

Mr. Cooke: To that question, direct interrogatory No. 5, the defendants object upon the ground that the evidence sought to be elicited by that question, to-wit, the matter of Mr. Denson's hotel experience, is irrelevant and immaterial; there is no question made in this case involving his experience or lack of it. On the further ground that the matter of his hotel experience is not in issue in any way and it is wholly unnecessary for the final determination of the case.

The Court: Objection overruled. The answer may be read.

Mr. Platt: Your Honor please, if your Honor

(Deposition of Harvey M. Toy.)

has any doubt this is an issue on the pleadings, I would be very anxious and willing—

The Court: (Interrupting) If you desire to make a statement, I would be glad to hear it.

Mr. Platt: Counsel continuously states this is not an issue in the case and I state to your Honor definitely that this is an issue in the case and it is so set out in the pleading. I think your Honor for permitting me to say something after you ruled.

(Question No. 5 read.) [792]

A. Yes. I have visited all the many hotel Peter G. Denson has built, owned and operated. I sold him the Johnson Hotel, in Visalia, California, which I know he sold to go into the Reno Hotel. He built and operated the Senator and Governor Hotels, in San Francisco. Also built and operated the Tioga Hotel, at Merced, California. He operated the Hotel Medford—Medford in Oregon, and the Hotel Travellers in Duns-muir, California. There are several more hotels he operated which I can not now remember. Therefore he is a builder, lessee, operator and owner of wide experience, all of his ventures were successful.

Mr. Cooke: Could I see that please. The defendants move to strike the following designed portion of the witness's answer to direct interrogatory No.

(Deposition of Harvey M. Toy.)

5, reading as follows: “* * * which I know he sold to go into the Reno Hotel.”

The Court: I think that may go out. That portion may go out.

Mr. Cooke: It is not responsive and is hearsay.

(Continuing deposition.)

6. Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

Mr. Cooke: We make the objection to that, if your Honor please, that the question is incompetent and irrelevant; the evidence elicited thereby, if any, would be as to what the [793] witness considered the reputation as distinguished from general reputation. We object to it on the further ground that the matter of ability, integrity or efficiency as a hotel man and hotel operator embraced in that question is not a subject to be established legally by the evidence as reputation, either general or otherwise. It must be established by other and more direct evidence. That the matter of establishing things by general reputation is more or less invariably limited to the question of truth and veracity and does not include the same matter as to his ability, integrity and efficiency as a hotel man and hotel operator. That it is not any issue in the case here whether he is an able or efficient hotel operator or not and there is nothing in the

(Deposition of Harvey M. Toy.)

pleadings and nothing in the answer in the case that would make that circumstance of any fundamental value whatever.

The Court: Objection overruled. The question may be answered.

A. Yes. I consider Mr. Peter G. Denson one of California's best and most outstanding hotel managers and operators. He is strictly honest—extremely efficient and economical. He stands very high in the opinion of all California hotel men.

Mr. Cooke: I move to strike all of the answer after the word "Yes", on the ground it is not responsive to the question, which asks him if he knows the reputation of Mr. Denson as to his ability, integrity and efficiency as a hotel [794] man and hotel operator and he proceeds, after he says "Yes", he goes on and says what he considers.

The Court: I might be establishing a rule of evidence all my own here, but it seems to me when a man is on the witness stand and objection is made and answer it not responsive, there is an opportunity right then and there for counsel to be guided thereby and pursue the examination, but a deposition, where a man is asked if he knows the reputation of an individual and instead of saying yes or no or does say yes and goes on and answers it, why should we rule that out just because he wasn't asked some other question which obviously counsel would propound if the objection

(Deposition of Harvey M. Toy.)

was made in the presence of the witness. Objection will be overruled.

Mr. Cooke: That is a motion to strike, your Honor.

The Court: The motion to strike will be denied.

(Continuing deposition.)

7. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

Mr. Cooke: We object to that and the evidence sought to be elicited thereby, on the ground that the question is: "If your answer to the last question is in the affirmative * * *" [795] that is, if he knows what his reputation is, then "state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is." There is certainly a circumstance where the situation that your Honor had in mind can not be present. That is an interrogatory first asking a man what the reputation of some one else is and then asking what, in your opinion, is his ability, integrity and efficiency. The question does not ask for the witness' opinion at all. It asks for his reputation, his knowledge of the reputation of Mr. Denson, then it asks for his opinion, disregarding the question of reputation and altogether departing from that and asks what the witness, what his own individual opinion is, which he wasn't qualified on at all and

(Deposition of Harvey M. Toy.)

wasn't expressed in the situation. They were talking about reputation all the time.

The Court: What was this question?

(Question read.)

Mr. Platt: We have qualified him as an expert in hotel operations and we are asking his opinion as to qualifications of Mr. Denson. We are asking his opinion as an expert and if we don't get that kind of evidence and if it isn't material, your Honor, and proper, there is no other method that I know of by which we can establish the qualifications of a man to run and operate a hotel, except to get his own testimony and have him say, "I am the best qualified man in the world to [796] run a hotel."

Mr. Cooke: No, we don't do it that way at all. Let him tell how many hotels he has run, whether successful or a failure, how many times he went into bankruptcy, like that.

The Court: Objection overruled. You may answer.

- A. It is of the highest type. He has always been most successful and made money in all of his ventures. I would be willing to employ him at a splendid salary and percentage to operate my chain of hotels.
8. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of

(Deposition of Harvey M. Toy.)

approximately one million four hundred thousand dollars, and assuming that a contemplated lessee, or lessees, thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.

Mr. Cooke: The question is objected to and the evidence sought to be elicited thereby is objected to on the ground it calls for an answer in accordance with the usual [797] custom and practices of hotel operations on the Pacific Coast. It is not shown that this witness knows anything about hotel operations in Nevada or any evidence from him there is any similarity whatever between the two. We object to it upon the further ground that whether the contract is fair, equitable or just is an ultimate question in this case reserved exclusively for the judge or the Court and can not be established by so-called expert witnesses giving their opinion as to what constitutes equitable or fair or

(Deposition of Harvey M. Toy.)

just. We object to it on the further ground that the witness is asked to form an opinion as to fairness and justness and equitableness of the contract upon one page of the contract, which contains only a portion of the obligations and the conditions of the contract and that therefore, there is no proper or legal basis for an expert to draw any conclusion as to whether the contract is fair or not.

The Court: Objection is overruled. The question may be answered.

- A. In answer to question 8, the lessor's return from the entire building, which includes the rentals from the number of stores, which I understand are eleven in all, will be more than sufficient to take care of all her obligations such as taxes, insurance, interest on borrowed money, and amortize the loan over a period of the 20 years, which I am informed the lease is for. Due to the fact that the rentals on the stores in the heart of Reno are very good and with five per cent for foods and ten per cent for beverages, and thirty per cent for all apartments and hotel rooms, gross rentals that is, to be paid to lessor by lessee, and with a hotel with approximately three hundred rooms and with the prevailing rentals in first class hotels, it will be more than sufficient to take care of

(Deposition of Harvey M. Toy.)

all the obligations that the lessor would have to meet. As to the fairness to the owner of the property who is leasing the hotel, the above percentages are more than just and adequate in the amount to pay for any hotel. In fact the prevailing rate is now 25 per cent for rooms, 5 per cent for food, and 8 per cent for beverages.

Mr. Cooke: The defendants move to strike the answer to direct interrogatory No. 8 of the witness, Harvey M. Toy, for all and singular the reasons stated in the objection to the question; on the further ground that he hasn't shown that he knows anything about the rental on stores in the heart of Reno, whether they are very good or not, as mentioned in his answer. It isn't shown that he knows anything about the conditions in Nevada in regard to the hotel business as compared with the hotel business in California.

The Court: Motion denied.

Cross-Interrogatories

Questions and answers Nos. 1 and 2 through subdivision (e) read without objection by plaintiff's counsel. [799]

Mr. Cooke: We move to suppress the direct interrogatories of the witness with reference to the fairness, the equity and reasonableness of the agreement, to which his attention is called, for his refusal and failure to answer cross interrogatory No. 2 by stating how much was allocated by him in

(Deposition of Harvey M. Toy.)

his computation for taxes and how much for upkeep and how much for insurance and covering it all in one item of 20 thousand dollars a year for all three of these, which is not what the question asked for.

The Court: The motion to suppress is denied, but counsel is given the privilege of taking a further deposition of the witness so that in the event of failure and refusal of the witness to answer any questions that may be propounded, proper proceedings may be had to compel answers of the witness.

Mr. Platt: It shows this is deposition of plaintiff's witness, not of defendants'. We are not under any obligation to cure defects of the plaintiff's.

The Court: That may not be shown from the record. That will be stricken from the record.

Mr. Cooke: That will be our contention, your Honor, whether in the record or not. We also move to suppress the answer to subdivision (e) of that same cross interrogatory, when we ask for amount that he allocates to cover interest on [800] borrowed money, his answer being: "Four per cent on borrowed money my understanding is they are trying to borrow \$650,000 or \$625,000, even \$800,000, \$72,000 would cover interest and amortization over twenty years." That is not an answer as to the interest nor is it an answer as to the amount allocated for amortization and the question on direct is on the assumption that there is \$1,400,000 cost of the building and no statement, so far as I recall, as to what amount was to be borrowed except as

(Deposition of Harvey M. Toy.)

stated in one page of the contract that is annexed to the question and made a part of the question, which states that second parties, as part of the lease, will guarantee to said first party the total annual income from the entire building which the first party will receive will be in amount at least sufficient to cover payments required of the first party for taxes, upkeep, insurance, interest on borrowed money, and to amortize the cost of said building within said lease period. We make that motion.

The Court: Motion to suppress denied and counsel is now given the privilege, if he desires any further answer, to the question, he may take further deposition of the witness. Deposition admitted in evidence as Plaintiff's Exhibit "V".

Mr. Cooke: May I state now for the record that we decline to take any further steps.

The Court: There is no order from the Court that [801] you take a deposition. That is for you to decide.

Mr. Cooke: I want your Honor to understand our position.

The Court: I know. I do not feel I should suppress an answer, particularly on matters of this kind, where an ordinary layman or hotel man might think he has sufficiently answered the question when in fact he didn't.

Mr. Platt: If the Court please, we now offer in evidence the deposition of Dan E. London.

Deposition of
DAN E. LONDON
Direct Interrogatories

Questions and answers Nos. 1 and 3 inclusive read without objection.

4. Q. Are you acquainted with Peter G. Denson, who resides at the Sir Francis Drake Hotel, San Francisco, California, and if so, how long have you known him?

A. I have known Peter G. Denson for a period of 14 years. Mr. Denson has had extensive hotel experience, having operated, since my acquaintance with him, the Medford Hotel, Medford, Oregon, from 1933 to 1935; the Travelers Hotel, Duns-muir, California, from 1930 to 1939, and the Johnson Hotel at Visalia, California, from 1937 to 1946. [802]

Mr. Cooke: The defendants move to strike all of the answer after the sentence, "I have known Peter G. Denson for a period of 14 years", which reads: "Mr. Denson has had extensive experience * * * to 1946," upon the ground that it is not responsive to the question. The question is simply are you acquainted with him and how long have you known him.

Mr. Platt: If the Court please, may I look at the rest of this deposition. I rather think probably the same question has been asked—no—I thought it might have been asked later but it hasn't. Now

(Deposition of Dan E. London.)

if Mr. Cooke's motion was sustained to strike the rest of answer No. 4, which probably is well taken because it is not responsive, yet the next question clears it all up.

The Court: That is the reason I will deny the motion. If the witness was here in court and immediately upon answering that first mentioned question as he did the motion to strike was made because it was not responsive, the motion would be granted and counsel would have an opportunity to further examine. The motion is denied.

(Continuing with deposition.)

5. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much [803] detail as possible.

Mr. Cooke: We object to that on the ground that the question of his ability and experience as a hotel man is not in issue in this case. It is simply a matter here as to whether the legal status of a document as a contract can be specifically performed or not. It is immaterial to any question in the case.

The Court: Objection will be overruled.

(Continuing with deposition.)

A. His experience has been extensive, as he managed the Medford Hotel, Medford, Oregon, 1933 to 1936, Travelers Hotel,

(Deposition of Dan E. London.)

Dunsmuir, California, 1930 to 1939, Johnson Hotel, Visalia, California, 1937 to 1946.

- 6 Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

Mr. Cooke: That is objected to on the same ground as to same questions elsewhere propounded to other witnesses, in that it calls for reputation instead of general reputation. It is objected to on the further ground that the matter of his ability, integrity and efficiency is not a thing to be established by general reputation. On the further ground that the question of his ability or integrity or efficiency as a hotel man or hotel operator is not pleaded in the case, not in issue, no question made about it. It is immaterial to any [804] final disposition of this case.

The Court: Objection overruled.

(Continuing with deposition.)

A. I do know his reputation.

- 7 Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

Mr. Cooke: We make the same objection there as previously and upon the further ground no foun-

(Deposition of Dan E. London.)

dition laid for asking for general reputation instead of merely a reputation.

The Court: Same ruling. Objection will be overruled.

(Continuing with deposition.)

- A. Mr. Denson is considered an exceptionally capable hotel operator and to my knowledge has always conducted successful operations which have been well regarded by the traveling hotel public. In my opinion, his ability to manage a hotel efficiently is unquestioned.
8. Q. Assuming that there is being constructed in Reno, Nevada what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement [805] as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual cus-

(Deposition of Dan E. London.)

tom and practices of hotel operations on the Pacific Coast.

Mr. Cooke: I make the objection, if the Court please, to the interrogatory and evidence sought to be elicited on the ground that the property described here is not on the Pacific Coast and the usual custom and practices on the Pacific Coast would not necessarily apply. There is nothing to show that they are the same here as they are there. I mean the custom and practices are the same. We object on the further ground that there is a picture of the hotel being constructed at a cost of approximately one million four hundred thousand dollars and there is no basis for that in the evidence that I know of, that this is the cost. The actual cost is nearly two million dollars, the total venture, hence the figures given here, based upon some supposed cost of the building as representing the entire investment would be misleading, would have no basis to establishing of any value and is simply confusing. We object to it on the further ground that the question as to whether the lease is fair, equitable and just to the lessor, fair and just and adequate, amount to pay as rental and answer to that is sought to be had from the witness by showing him one page and have him base his answer on one [806] page of the contract consisting of some three or four pages. I do not know how many, but there is more than that one. Before this witness, or any witness, could give any answer to any value whatever as to whether it is fair or just and equitable, he would

(Deposition of Dan E. London.)

have the entire document. We make the further objection that they are only asking for one item, one special matter of the lease agreement or lease arrangement, namely the percentage rentals and the guaranteed minimum appearing on one page and that that is irrelevant and immaterial without being connected up and considered in connection with the entire lease or the entire document, and that essential facts are omitted in the hypothetical question, as I have already detailed in my objection.

The Court: Objection overruled. The question may be answered.

(Continuing with deposition.)

A. In my opinion, from an examination of the attached statement of lessors, return from the hotel building, including sub-rentals from a number of stores, will be more than sufficient to take care of all major obligations and quite enough to amortize the loan over a period of twenty years, for which period I understand the lease is drawn. The percentage figures, which, of course, are the most important from the view point of the owner, are very fair and are usual and comparable to percentage figures in other hotel leases. [807]

Mr. Cooke: We move to strike the answer of the witness, Dan E. London, to direct interrogatory No. 8, on the ground that his answer apparently on the

(Deposition of Dan E. London.)

face of it does not respond to the statements of fact in the hypothetical question, in that he has taken into consideration giving his answer as to the fairness and equity of the agreement subrentals, what he calls subrentals, from a number of stores and there is no way of knowing what he allocates to these subrentals and the matter of subrentals is not presented to him in the hypothetical question as to amount, or the subject at all.

The Court: Motion denied.

Cross-Interrogatories

Question 1 and answer read.

Mr. Platt: I suppose that means none, but it is "no."

Mr. Platt: I will admit that is what he means.

Reads questions and answers thru subdivision (e) of question No. 2 without objection.

Mr. Platt: We move to suppress that portion of the witness' deposition with reference to the agreement being just and fair and equitable on the ground he has neglected and failed to make proper answer to cross-interrogatory with reference to the manner in which he arrived at his answer given on direct, particularly with regard to the amount that he allocated or deemed necessary to cover upkeep and the [808] amount that he deemed was necessary to cover interest on borrowed money.

The Court: Motion will be denied and the defendants are given the privilege of further examining the witness on these subjects if they so desire.

(Deposition of Dan E. London.)

Mr. Cooke: There is a further subdivision.

(Continuing with deposition.)

(f) as the cost of the building and to amortize the cost of said building?

A. Entirely depending on the amount borrowed.

Mr. Platt: I would like to renew my motion to strike based on the failure and refusal of the witness to answer as to what amount he assumed in reaching his conclusion.

The Court: You may renew the motion and the same ruling and same understanding, that defendants may, if they so desire to, further examine the witness.

Balance of desposition read, without objection.

Mr. Cooke: We move to suppress all the testimony of the witness London with reference to the fairness and the equity of the alleged contract, on the ground that he failed and refused to answer the proper cross-interrogatory, namely cross-interrogatory No. 3.

The Court: Motion will be denied and defendants will be given the privilege of further examining [809] the witness if they so desire on the matter indicated in the motion. Deposition will be admitted as Plaintiff's Exhibit "W".

Mr. Platt: We now offer in evidence, if the Court please, the deposition of Will P. Taylor.

Deposition of
WILL P. TAYLOR

Direct Interrogatories

Questions and answers Nos. 1 through 5 read without objection.

6. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

Mr. Cooke. That is objected to on the ground it is irrelevant and immaterial. His character is not in issue as a hotel man or character of experience—entirely irrelevant to any issue in this case.

The Court: Objection overruled.

(Continuing with deposition.)

- A. Yes, I can certify that I have known of his ownership and operation of Hotel Medford, Medford, Oregon, Hotels Senator and Governor, San Francisco, Hotel Tioga, Merced, and Hotel Johnson. My recollection is that Mr. Denson in the majority of cases mentioned, built, opened and operated the above hotels.
7. Q. Do you know the reputation of Mr. Peter G. Denson, the [810] plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

(Deposition of Will P. Taylor.)

Mr. Cooke: That is objected to and the evidence sought to be elicited as to what his reputation is, as irrelevant and immaterial; that if his reputation is important at all, it is a general reputation, which the witness would be required to state; that as to whether his reputation as a hotel man, efficient hotel man, or ability and integrity and character is good is entirely immaterial, so far as this case is concerned.

The Court: Objection overruled.

(Continuing with deposition.)

A. Yes, it is excellent.

Mr. Cooke: We move to strike out the last part; not responsive to the question—"it is excellent." That part I move to strike.

The Court: That all depends on whether or not some other question is involved here. I will withhold ruling on that until you read a little further.

(Continuing with deposition.)

8. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

The Court: The other motion will be granted. It may [811] go out, "it is excellent", as not responsive.

(Continuing with deposition.)

A. It is my opinion Mr. Denson's qualifica-

(Deposition of Will P. Taylor.)

tions, his ability, integrity and efficiency as an hotel operator are excellent, and he could be depended upon to achieve satisfactory results in every particular.

The Court: We will take a recess at this time for about 15 minutes.

(Short recess.)

Deposition of Will T. Taylor continued on direct interrogatories.

9. Q. Assuming that there is being constructed in Reno, Nevada what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.

Mr. Cooke: We make the same objection to that as [812] we made to question No. 8 of the London

(Deposition of Will P. Taylor.)

deposition direct interrogatory, without repeating at length.

The Court: It may be deemed to be so made and overruled.

(Continuing with deposition.)

A. Yes, I would consider it more than equitable.

Mr. Cooke: I move to strike the answer on the ground that it is simply conclusion of the witness as to what he considers equitable, based upon one page of the September 24, 1945 document and that he is only undertaking to testify as to the rentals, without taking into consideration other conditions of the contract, all of which must be considered in determining whether or not an agreement is fair and equitable and within the rules of specific performance.

The Court: Motion denied.

Cross-Interrogatories

Reads all cross-interrogatories and answers without objection from counsel for plaintiff.

Mr. Platt: The defendants move to suppress the entire testimony of the witness with reference to the adequacy or equity or fairness of the agreement that he is referring to, upon the grounds that he failed and refused to answer cross-interrogatories which were proper in view of his own testimony on direct, as to how he reached his conclusion, particularly

(Deposition of Will P. Taylor.)

[813] what he assumed was the total income from the entire building and what he assumed as to the amount necessary to cover payment required to be paid by the lessor for taxes, what he assumes necessary to cover upkeep and what for insurance, what he assumes necessary to cover interest on borrowed money, and what he assumes as the amount necessary for the cost of the building and to amortize such cost and what he assumes for the allocation to the premises to be leased for hotel purposes and what amount did he allocate to the 11 store spaces, and his neglect and refusal to answer cross interrogatory No. 3, where he was asked to state which one of the two minimum rental provisions mentioned in the paper that was presented to him, namely, the one based upon percentage and the other based upon amount necessary to take care of certain fixed charges, such as interest on borrowed money, upkeep, and so on.

The Court: The motion will be denied, with the privilege to the defendant to further interrogate this witness if so desired. I might add that in any of these statements where I stated that defendants had the privilege, if they so desired, to further interrogate the witness that sufficient time would be given if, at the conclusion of the case they indicate their desire to take advantage of that opportunity.

Mr. Cooke: May the record show that the envelope [814] containing the deposition of Will Taylor was received by the clerk and filed on December 2, 1946?

The Court: Yes sir, it may so show. Deposition admitted as Exhibit "X".

Mr. Platt: We now offer in evidence the deposition of S. P. Barash.

S. P. BARASH

Direct Interrogatories

Questions and answers of Nos. 1 through 4 read without objection.

5. Q. Please state whether or not you discussed the construction and operation of a hotel on the Mapes property known as the old postoffice site on Virginia Street, in Reno, Nevada, with Mrs. Mapes some time during February or March, 1940.

Mr. Cooke: Objected, if the court please, by the defendants on the ground that direct interrogatory No. 5 just read by counsel would, if answered, elicit testimony as to preliminary negotiations and preliminary proceedings had five years or thereabouts prior to the making of the document that is in question in this case and that it is foreclosed by the rule with regard to the document being deemed to conclusively represent what the parties agreed upon rather than what they talked about three or four years prior. [815]

The Court: If it is not disclosed by the deposition that Mr. Denson was present, I will sustain that objection.

(Deposition of S. P. Barash.)

Mr. Platt: It is shown in the next question, your Honor.

The Court: I will withhold ruling until we see what the next question is.

(Continuing with deposition.)

6. Q. If your answer to the previous question is in the affirmative, please state who was with you at the time you discussed the matter of the construction and operation of a hotel on the property aforesaid.

A. Mr. P. G. Denson, Mr. Douglas Stone and Mr. Leon Huckins.

The Court: Objection to the previous question will be overruled.

Mr. Platt: May I here state the answer as shown by the deposition?

The Court: Yes sir.

Mr. Platt: To question 5 the answer is yes.

(Continuing with deposition.)

7. Q. If you have already testified that you had a conversation or conversations with Mrs. Mapes, please testify what the conversation or conversations were, to the best of your recollection.

Mr. Cooke: We make the same objection as to the evidence [816] sought to be elicited by the question, your Honor. Pertains to preliminary discussions and talk with parties not parties to the con-

(Deposition of S. P. Barash.)

tract, but with the witness himself. That it is too remote in point of time to be of any value in determining conditions as they existed during the time the document was signed September 24th, 1945, or October 4, 1945.

The Court: Objection overruled.

(Continuing deposition.)

A. Mr. Denson had plans for a hotel to be erected on the old postoffice site and I was requested to advise all the parties concerned regarding the possibility of securing a mortgage loan on the new development as well as the terms of such a loan.

Mr. Cooke: We move to strike the portion of the answer which reads: "Mr. Denson had plans for a hotel to be erected on the old postoffice site", on the ground it is not responsive to the question, which is, "Please testify what the conversation or conversations were, to the best of your recollection."

The Court: What is the entire answer of that?

(Answer read.)

The Court: Motion is denied.

(Continuing deposition.)

8. Q. Please state why you went to Reno at that time and at whose request. [817]

Mr. Cooke: Objected to as irrelevant and immaterial; too remote for anything to do with the contract in question.

(Deposition of S. P. Barash.)

The Court: It does seem as if it is. Objection sustained.

(Continuing with deposition.)

9. Q. Please state whether or not Mr. P. G. Denson had any conversation or conversations with Mrs. Mapes regarding the construction, operation, and financing of said proposed hotel.

Mr. Cooke: We object to that as irrelevant and immaterial, in that it is subject to the same kind of objection in regard to preliminary negotiations heretofore made; that it is indefinite as to point of time as to what conversation or conversations he is asking about, that is, as to when they occurred, and it is objectionable also on the ground it calls for hearsay. He is asked to state whether or not Mr. Denson had any conversations with Mrs. Mapes. He might answer that question by saying yes and turn out that all he had was hearsay.

The Court: In regard to the point of time, I gather that it refers to this conversation previously identified at the time.

Mr. Platt: Yes, your Honor, at which all parties were present.

Mr. Cooke: It doesn't so show on the face of the question. [818]

The Court: The objection will be overruled.

Mr. Platt: The answer is yes.

(Continuing with deposition.)

(Deposition of S. P. Barash.)

10. Q. If your answer to the previous question is in the affirmative, please state what said conversation or conversations consisted of, when and where they took place, and who was present.

Mr. Cooke: Same objection as made to interrogatory No. 9, your Honor.

The Court: Objection overruled.

A. The meeting took place at Mrs. Mapes home. The parties present and the subject of the conversation is covered in 6 and 7.

Mr. Platt: In order to inform your Honor as to question 6, the question is: "Please state who was with you at the time you discussed the matter of the construction and operation of a hotel on the property aforesaid", and the answer is: "Mr. P. G. Denson, Mr. Douglas Stone and Mr. Leon Huckins." The witness refers to that question. And then he refers to question 7, which is: "If you have already testified that you had a conversation or conversations with Mrs. Mapes, please testify what the conversation or conversations were, to the best of your recollection", and he answered that. Those are the two questions he refers to in his answer to question No. 10.

(Continuing with deposition.) [819]

11. Q. If negotiations were carried on in respect to the construction, operation, and financing of said proposed hotel, please state the

(Deposition of S. P. Barash.)

conversations relating thereto, or, if you can not remember the conversations, please state the substance of said conversations and particularly the conversations or substance of conversations relating to the possible leasing and operation of that hotel by P. G. Denson, if such was the case.

Mr. Cooke: That is objected to, if the Court please, upon the ground it is irrelevant and immaterial under the rule relating to preliminary negotiations. It is too remote to have any bearing on the question of whether the plaintiff is entitled to specific performance of the agreement of September 24, 1945 and I repeat there the same objection made to the interrogatory next above.

The Court: Same ruling. Objection overruled.

(Continuing with deposition.)

- A. Mr. Denson proposed to lease the hotel on a percentage lease and the discussion was mostly about the size, number of rooms and estimated cost of the building.
12. Q. If negotiations continued for the construction, operation, and financing of said proposed hotel, please state how long said negotiations continued and the reason for the termination of said negotiations if you know.

Mr. Cooke: Same objection as to the next previous several questions. [820]

(Deposition of S. P. Barash.)

The Court: Same ruling.

A. This was the only meeting I attended.

13. Q. Please state how many times you came to Reno to discuss said proposed hotel with Mrs. Mapes and also state if you know how many times Mr. P. G. Denson called upon Mrs. Mapes and how many times Mr. Douglas Stone and Mr. L. W. Huckins called upon Mrs. Mapes in Reno, Nevada.

Mr. Cooke: Same objection, your Honor.

The Court: Same ruling.

Mr. Platt: The answer is:

A. I called only once. I have no way of knowing how many times the other parties went to Reno or met Mrs. Mapes.

14. Q. Please state of your own knowledge whether or not Douglas Stone, the architect, prepared any drawings, pictures, and plans for Mrs. Mapes some time about March, 1940.

Mr. Cooke: Same objection and the special objection that the plans drawn by Mr. Douglas Stone are not shown to have any connection with Mr. Denson or the subsequent contract or with the hotel that was finally built or under course of construction. Has absolutely nothing to do with the case.

The Court: The objection seems to be good. Sustained.

(Deposition of S. P. Barash.)

(Continuing with deposition.)

Questions 15 and 16 read. Same objection and same ruling. Objection sustained. [821]

Questions and answers No. 17 and 18 read without objection.

19. Q. Please state your opinion of P. G. Denson as a successful hotel operator and give the basis for your answer.

Mr. Cooke: That is objected to, if the Court please, upon the ground his opinion is not any legal evidence of the establishment of the fact we may know Mr. Denson is a successful hotel operator, and it is only general reputation that would be admissible in any event and this simply calls for individual opinion of one man.

The Court: Objection overruled. Answer the question.

A. Mr. Denson is a competent and capable hotel operator. He was successful in all his hotel operations.

20. Q. Do you consider the terms of a proposed lease as set out in Exhibit "A" attached to these direct interrogatories, just, fair, and equitable to the lessor and if so, state why.

Mr. Cooke. That is objected to, if your Honor please, upon the ground that there is no proper sufficient basis in the question to enable the witness

(Deposition of S. P. Barash.)

to reach any conclusion. On the further ground it calls for the witness' decision upon a matter that is for the ultimate decision of this Court, and it is objected to on the further ground that the essential facts are not assumed in the question in regard to the income of the building, that in any event the testimony is immaterial, irrelevant and inadmissible. [822]

The Court: Objection overruled.

Mr. Platt: For your Honor's information, I might say a copy of the entire lease is attached, Exhibit "A", in connection with this question.

(Continuing with deposition.)

A. Yes they are fair and are more generous than I would offer. I think 25% of room gross is ample and 3% of food gross is ample where tenant is supplying the equipment and furniture. The minimum guarantee as covered by clause "9" in the agreement is larger than I would personally agree to.

Questions and answers Nos. 21 and 22 read without objection.

23. Q. Please state your experience, if any, as the lessee of a hotel or hotels, giving the names of said hotel or hotels, if any, and the period of time you acted as lessee.

Mr. Cooke: Defendants interpose objection to direct interrogatory No. 23 upon the ground the

(Deposition of S. P. Barash.)

evidence sought to be elicited thereby is irrelevant and immaterial for the reasons stated in other objections previously stated.

The Court: Objection overruled.

A. Same as above.

Cross-Interrogatories

All questions and answers read without objection.

The Court: It may be admitted as Plaintiff's Exhibit "Y". [823]

Mr. Platt: We offer in evidence, your Honor, the deposition of

THOMAS E. HULL

Questions and answers Nos. 1 through 4 read without objection.

5. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

Mr. Cooke: That is objected to as irrelevant and immaterial, his experience. Not any issue in the case.

The Court: Objection overruled.

(Continuing with deposition:)

A. Owning and operating several hotels of prominence over the past 25 years.

6. Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for

(Deposition of Thomas E. Hull.)

his ability, integrity and efficiency as a hotel man and hotel operator?

Mr. Cooke: That is objected to upon the ground that it is not a proper question or not a question that would elicit proper evidence as to reputation. It does not call for general reputation; that in any event the reputation of Mr. Denson is irrelevant and immaterial, not in issue in this case and it is not attacked, no occasion for him to put in any evidence as to his character until there is some attack.

The Court: What is that question again? [824]

(Question read.)

The Court: Objection overruled.

(Continuing with deposition:)

A. Excellent.

7. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

Mr. Cooke: I suppose to be consistent, I should ask your Honor to strike the answer to question 8 on the ground it is not responsive. He was asked if he knew the reputation and he said it is excellent.

Mr. Platt: You mean No. 6.

Mr. Cooke: Yes.

Mr. Platt: Instead of saying "Yes, I know," he said "Excellent."

(Deposition of Thomas E. Hull.)

Mr. Cooke: Yes, but he hasn't said he knew.

The Court: Objection will be overruled.

(Question 7 read again.)

Mr. Cooke: That is objected to upon the ground there is no question made to the witness as to his opinion; that his opinion, in any event, would be irrelevant and immaterial, it can't establish integrity, efficiency as a hotel man or hotel operator by the opinion of one man, the witness.

The Court: Objection overruled.

(Continuing with deposition:) [825]

- A. By the financial success he has achieved and by the reputation for his ability that he has in the hotel fraternity and with people such as bankers, attorneys, who have had connections and knowledge of his operations over the past 25 years.
8. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expenses of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the

(Deposition of Thomas E. Hull.)

rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.

Mr. Cooke: That is objected to upon the ground that it does not contain a sufficient basis or assumption of the facts; that there is only one page of the 5-page document of September 24th annexed for the witness's examination; that his opinion as to that one page would be fair or unfair would be of no aid to the Court in determining whether the agreement as a whole is fair and equitable. That in order to qualify the [826] witness and lay the proper foundation in a hypothetical question, the entire agreement should be referred to him, so that he could answer the question upon the entire agreement and not upon only one page. We object on the further ground that he is asked to state whether it is in accordance with the usual custom and practices of hotel operations on the Pacific Coast, which are not shown to be in effect or to be applicable to conditions in Reno. We object on the further ground that it is a question to be ultimately determined by the Court and it is not for any witness to usurp the province of the Court. The question of whether the agreement is equitable and fair is one peculiarly for the Court to determine and not for a layman.

(Deposition of Thomas E. Hull.)

The Court: Objection overruled.

(Continuing with deposition:)

- A. I personally originated the first percentage lease on a hotel property in California, the same being at the Mayfair Hotel, Los Angeles, California. This lease was automatic in percentages, as per the terms as recited in the following brief.

The Mayfair lease by 15 years' experience has proven successful and fair to all parties concerned, and has been used by hotel accounting houses as a yardstick and considered workable, practical and a fair basis of computing the terms of rental percentage basis. I personally think the terms of rental as recited in the brief is extremely fair to the lessor. The percentages as outlined under the terms of rental in the [827] lease brief attached can be applied to the gross receipts as estimated herewith, thereby leaving net returns to the lessor of sufficient amount to amortize the invested capital over a 20-year period, plus taxes, insurance and interest on borrowed capital, etc.

Mr. Cooke: We move to strike the portion of the answer to direct interrogatory No. 8, reading, "I personally originated the first percentage lease on a hotel property in California * * * and con-

(Deposition of Thomas E. Hull.)

sidered workable, practical and a fair basis of computing the terms of rental percentage basis." That portion I have read, I move to strike.

The Court: I will regard that as sort of foundation for his opinion to show the method by which he arrives at his answer. The motion will be denied.

Mr. Cooke: I have not finished it, your Honor. I would like to finish my motion.

The Court: Oh, pardon me, I thought you were through.

Mr. Cooke: Upon the ground that it is not responsive to the question, which was: State whether or not this particular document—this page 1 out of the 5 pages of the September 24, 1945 agreement—was fair and equitable to the lessor. I think that is all of the motion.

The Court: The motion will be denied.

Mr. Cooke: I think I will move to strike the remainder [828] of that answer on the ground that it is not responsive but rather evasive of the question that is asked. I do not mean intentionally evasive, but amounts to evasion, answering the direct question as to whether the percentage, etc., on that one page of the document are equitable and reasonable.

The Court: Motion denied.

Cross-Interrogatories

Questions and answers read without objection on part of plaintiff's counsel.

(Deposition of Thomas E. Hull.)

Mr. Platt: We move to suppress the deposition of the witness in answer to direct interrogatory No. 8 on the ground he has declined and refused to answer the cross-interrogatory as shown by cross-interrogatory 2, in regard to how much he needs for these various items where he says they are all covered by (b), which simply states, that answer is: "There should be ample revenue from this operation to pay taxes and all other taxes, including amortization of invested capital over a period of 20 years," and the following questions, (c), (d) and (e) asked for specific results on his computations. He simply refers back to that general question that there should be ample to cover all those things. The same with subdivision (f) of that same interrogatory, "Same as answer 'B'," ; just wants to make one general sweeping statement, "that ought to be sufficient to cover all those things." [829]

The Court: Motion will be denied, and counsel for defendants or defendants will be granted the privilege to further interrogate the witness on any of the matters mentioned in his deposition if at the time this case is submitted to the Court request for such permission is made.

Mr. Cooke: In that connection, I would like the record to show the envelope containing this deposition—does not show filing but shows it was mailed from Los Angeles on December 9, 1946.

The Court: The deposition will be admitted in evidence as Plaintiff's Exhibit "Z."

We will set this case for further hearing and trial December 18th at 10:00 o'clock at Reno. [830]

Wednesday, December 18, 1946, 10:00 a.m.

Appearances same as at previous sessions.

The Court: Gentlemen, are you ready to proceed now?

Mr. Platt: We are ready, your Honor. If the Court please, we have some additional depositions that are in the hands of the clerk, but in most part they are cumulative and we have decided not to offer them in evidence. Under the stipulation we have with counsel, they will be permitted to offer them in evidence if they so desire.

The Court: Do you reserve the right to introduce them if you should determine at a later time?

Mr. Platt: We thank your Honor for that privilege, but probably we will not offer them.

The Court: Anything further?

Mr. Platt: I would like to recall Mr. Denson.

P. G. DENSON,

having been previously sworn, was recalled and testified as follows:

Direct Examination

By Mr. Platt:

Q. Mr. Denson, Mrs. Mapes, one of the defendants, has testified here in substance that upon several occasions she sought an interview or interviews

(Testimony of P. G. Denson.)

with you in order to make preparations toward the drawing of a lease and in consideration of its terms. Has Mrs. Mapes ever sought such an interview with you? A. Never, at no time. [831]

Q. Has any one of the defendants in this action ever sought such an interview with you?

A. There has never been a word said about it, Mr. Platt.

Q. Has any person purporting to be an attorney, a representative, or agent of any one of the defendants ever sought such an interview with you?

A. At no time, never.

Q. Mrs. Mapes also testified that she phoned you on or about August 9th for such an interview. Is that true?

A. I do not think that Mrs. Mapes—I do not think the record will show that she made that statement. I think she testified that she phoned Mr. Moorehead, but Mrs. Mapes did phone me.

Mr. Cooke: You say August 9th, you don't state what year, Mr. Platt.

A. 1945.

Q. But directing my question to this particular thing, did Mrs. Mapes at any time phone you from any place for an interview to get together and confer with respect to the lease?

A. Absolutely not, at no time. I would like to straighten out and make that clear about August 9th, that was 1945, that she phoned to me. She said, "Mr. Denson, let's get together on this hotel and we can have a meeting in Reno or San Fran-

(Testimony of P. G. Denson.)

cisco," and I was the one that phoned Mr. Moorehead myself. The record will show that.

Q. That was before Mrs. Mapes signed the contract? [832] A. Oh yes.

Q. Or before the execution of the contract by all parties on October 4, 1945?

A. Yes, over a month and a half.

Q. Charles W. Mapes, Jr., one of the defendants, testified that he had a conversation with you in your room at the Sir Francis Drake Hotel on or about April 1, 1946?

A. It was April 1st in the afternoon in my room.

Q. You had such a conversation?

A. I had a conversation with him, yes.

Q. And was anybody else present?

A. Just he and I.

Q. He also testified that the conversation referred particularly to his request for an arrangement with you whereby he was to share 70 per cent and you 30 per cent of the contract or lease. Did such a conversation ever take place?

Mr. Cooke: Objected to—that has already been gone into when he was on the stand before. He testified, as I recall, he wasn't interested in anything of that sort and no such talk was ever had. My recollection of it.

The Court: Objection overruled. Answer the question.

A. There was nothing said in regard to the percentage of the deal at all. There was nothing said in regard about us getting together in regard to per-

(Testimony of P. G. Denson.)

centages. I stated before what our meeting was there, in regard to getting me to give up the [833] sky room. That was the whole thing.

Q. That was the entire conversation?

A. That was the entire conversation.

Q. There was nothing said at all by either one of you about a 70-30 split between you and Mr. Mapes?

A. Mr. Platt, I never heard of it at all until the suit started.

Q. It has been testified here that you were in the office of Mr. Cooke, the attorney for the defendants, on September 24, 1945.

A. That couldn't have been.

Q. Wait until I ask the question. Were you in Mr. Cooke's office on September 23rd, 24th or 25th?

A. I was not in Mr. Cooke's office on any of those dates. The first time I was in Mr. Cooke's office was October 4th.

Q. 1945? A. 1945, yes sir.

Q. You have already testified that you were in Mrs. Mapes' home on September 23rd?

A. That is correct.

Q. And that Mr. Cooke was also present?

A. He was.

Q. And may I inquire was September 23, 1945, a Sunday? A. It was, yes sir.

Q. And after that interview at Mrs. Mapes' home on September [834] 23, 1945, what time did you leave Mrs. Mapes' home?

(Testimony of P. G. Denson.)

A. I would say it was around six o'clock, or it might have been a little later.

Q. In the evening?

A. In the evening, yes sir, after dinner. I had dinner there.

Q. And then where did you go?

A. I went to Sacramento and spent the night there at the Clunie Hotel.

Q. Was your car out in front of the house?

A. It was, yes sir.

Q. And you got in the car and went to Sacramento?

A. Mrs. Mapes was at the car when I left; told me goodbye.

Q. And you drove directly to Sacramento?

A. Directly to Sacramento, yes sir.

Q. How long did you stay in Sacramento?

A. Stayed there all night.

Q. At what hotel did you stay?

A. At the Clunie Hotel. The records will show it.

Q. How long did you remain there?

A. I left Sacramento before day light and drove to Visalia, stayed in Visalia about two or three hours, transacting some of my business, and then drove on to the Biltmore Hotel at Los Angeles and registered at the Biltmore Hotel on the 24th. Was there for dinner.

Q. And as I recall, it was there at the Biltmore Hotel that [835] you received the contract signed by Mrs. Mapes?

(Testimony of P. G. Denson.)

A. The contract was to be sent to me air mail special so I would get it the morning of the 25th, so that I could take it up with Mr. Gock, and I phoned to Mr. Moorehead as soon as the contract arrived and he came to the Biltmore Hotel and then arrangement was made with Mr. Gock for meeting with myself. I believe Mr. Gock made an appointment with Mr. Clark, the president of the Occidental Life Insurance Company, for Mr. Moorehead and myself. Mr. Moorehead had the plans with him. I only had this contract.

Mr. Cooke: I move to strike all that as not responsive.

The Court: That is correct. That part not responsive may be stricken.

Mr. Platt: That is not responsive.

Q. Mr. Mapes testified, as I recall it, that on January 25, 1946, you did not interview Mr. Hopper by yourself, is that true?

A. That is not true. I did interview Mr. Hopper by myself.

Q. On January 25th?

A. On January 25th, this year, yes.

Q. And at what time of day did you interview Mr. Hopper?

A. I would say between 10 and 11 o'clock.

Q. In the morning? A. In the morning.

Q. And after the interview did you report the interview to Mrs. Mapes?

A. I went from there to the office where Charles

(Testimony of P. G. Denson.)

and Mr. Moorehead were and I had Charles phone his mother. I can't say whether I talked to Mrs. Mapes or Charles, but anyway appointment was made for me to call for Mrs. Mapes at quarter to two to take her to Mr. Hopper's office and that I did.

Q. Did you keep that appointment?

A. I did, yes sir.

Q. And you took her to Mr. Hopper's office?

A. I did, yes sir.

Q. And you discussed, the three of you, the so-called desire for the 12-foot strip?

A. That is correct, yes sir.

Q. There has been evidence here that you stated to Mr. Mapes and to Mrs. Mapes that you wanted the contract signed so that you could show it? Why did you want to show the contract?

A. There was only person I was interested in showing that too, that was Mr. Gock. I didn't care to talk to Mr. Gock about the loan for the building unless it was something I was interested in myself.

Q. So that was your only reason for wanting the signed contract?

A. The only reason, that is correct.

Q. Did you tell both Mrs. Mapes and Charles that that was the [837] reason why you wanted her to sign the contract?

A. I am informed that I wouldn't go to Mr. Gock and ask for a loan for them unless I had a contract for myself. It would not be businesslike. That was why we had the discussion.

(Testimony of P. G. Denson.)

Q. After you received the contract signed by Mrs. Mapes at the Biltmore Hotel on September 25, 1945, did you phone Mrs. Mapes? A. I did.

Q. And when you phoned was anybody else with you?

A. I don't remember whether Mr. Moorehead was there or not. After reading the contract, the clause in there that she objected to, that was supposed to have been left out, that was the part that Mr. Cooke was to redraft to leave out the clause that she objected to, but it wasn't left out. In fact, I wanted it in. It was Mrs. Mapes' direction, she objected to it very seriously. I think it mentioned the income from the entire building. It didn't mention the stores and I called Mrs. Mapes on the phone and she said, "Mr. Denson, did you get the contract?" I said, "Yes, I have, but I notice Mr. Cooke, the clause you so seriously objected to, is in there, but it does not take in the stores," and she says, "Mr. Denson, it takes in everything." I said, "All right, Mrs. Mapes, I will insert them, the income from the entire building, which I did, I typed it in there, and I said, "Then we can have it initialed when we get back." [838]

Mr. Cooke: I don't think that was responsive to the question, except the first two or three words. I move to strike.

(Question read.)

The Court: That is not responsive.

Mr. Platt: I would ask him, what was the conversation—I will ask you that question.

(Testimony of P. G. Denson.)

Q. What was the conversation?

Mr. Cooke: He has already testified.

Mr. Platt: All right then, we include that as being the answer, if agreeable to the Court.

The Court: Objection overruled. Answer the question.

A. The phone call was for the purpose of, in regard because it left out the stores from the total income of the building.

Q. As you have just testified with respect to that portion of the testimony objected to by counsel?

A. That is correct. That it was initialled in his office on October 4th.

Q. After Mrs. Mapes signed the contract did you ever phone her with respect to the loan that you were attempting to get for the building?

A. After Mr. Moorehead and I had called—I am not sure whether about the interview with Mr. Gock on the 25th or not—it might have been the 26th. [839]

Q. Of September?

A. Of September of 1945 and I wanted a letter of introduction to the president of the Occidental Life, I didn't know him. Mr. Gock said, "Peter, I am not going to write a letter, I will phone him now and make an appointment, and I told him I wanted to bring Mr. Moorehead; he had the cost sheets and blueprints and could probably explain it more thoroughly than I could. The appointment was made then for the next day with Mr. Clark, the president, and I presume we spent probably an hour and a half with Mr. Clark. They said that \$300,000

(Testimony of P. G. Denson.)

was the limit which the insurance company in Sacramento could loan, as Mr. Wright that they speak about so much, had said was the limit they could loan and that is why the Occidental Life Insurance Company came into the picture and then he spoke about being connected with the Bank of America, then wanted to know what Denson interviewed Gock about.

Mr. Cooke: Will you read that question?

(Question read.)

A. I did.

Mr. Cooke: I move to strike——

The Court: The answer heretofore given is stricken.

Q. What was the conversation? In order to save time, your Honor, I desire to ask Mr. Denson as to whether the conversation he had with Mrs. Mapes was the same conversation that you recited in that part of your answer which was objected to by [840] counsel?

A. I can give you my conversation with Mrs. Mapes in regard to our interview with Mr. Clark.

Q. All right. State what it was.

A. I informed Mrs. Mapes, as I had promised I would phone her as soon as I knew anything—I informed Mrs. Mapes that Mr. Moorehead—in fact, Mr. Moorehead was with me in my room at the Biltmore Hotel at the time——

Q. (Interrupting) Do you remember what date you phoned her?

(Testimony of P. G. Denson.)

A. I would say the 27th of September.

Q. 1945?

A. Yes, I am pretty positive that is the date. I can be mistaken, but I am almost positive that is the date.

Q. What was the conversation?

A. The conversation was that we had interviewed him and it looked very good and that she would receive some forms for her to make her financial statement and I said, "Mrs. Mapes, make it up because you will have to make it up with any insurance company you have business with." I said, "It looks very good. I am well satisfied with our meeting Mr. Clark, probably spent an hour and a half with him," and I turned the phone over to Mr. Moorehead and he also spoke to Mrs. Mapes about the appointment.

Q. Did you hear what Mr. Moorehead told her?

A. I think he stated the interview in our office and—— [841]

The Court: (Interrupting) I think it would be better to answer yes or no and then wait for further questions from Mr. Platt.

A. Yes sir.

Q. Did you hear what Mr. Moorehead said over the phone to Mrs. Mapes? A. I did, yes sir.

Q. Do you recall what he said?

A. He stated to Mrs. Mapes, "It looks very good" and he felt positive we would be able to get the loan through the Occidental Insurance Company.

(Testimony of P. G. Denson.)

Q. While you were talking to Mrs. Mapes upon that occasion, do you recall what she said to you?

A. I think she was very much pleased about it——

Q. (Interrupting) What did she say to you over the phone? A. She expressed——

Mr. Cooke: (Interrupting) I move to strike that as not responsive.

Mr. Platt: No objection.

The Court: It goes out.

Q. What, as nearly as you recall, did Mrs. Mapes say over the phone to you on that occasion?

A. "Well, that's just fine, Mr. Denson." Something to that effect.

Q. Mr. Denson, certain portions of Mrs. Mapes' testimony have [842] been called to my attention, in which she testified that she told you that the preliminary agreement had run out. Did she at any time or any place ever make such a statement to you? A. No.

Mr. Cooke: That isn't her testimony, Mr. Platt.

Q. She also testified that you brought the agreement in triplicate to her and said, "It is only a preliminary agreement" and that later she told you that the agreement of September 24, 1945, was not functioning. Did you ever have such a conversation with Mrs. Mapes? A. No.

Q. Did she ever make any such statements in substance to you? A. No.

Q. Or did you ever make any such statements to her? A. No, I did not.

(Testimony of P. G. Denson.)

Mr. Platt: I think that is all.

Cross-Examination

By Mr. Cooke:

Q. In regard to this loan, Mr. Denson, that you told us about in your direct examination a moment ago, what was the maximum amount that was contemplated you would be able to get by way of a loan?

A. Mr. Moorehead had the sheet with him which is in evidence right here and it only shows 625 thousand he was asking for and in my presence that was the only amount that was spoken to [843] Mr. Clark by Mr. Moorehead. That is the amount we talked to Mr. Clark about, 625 thousand.

Q. And prior to that had Mrs. Mapes ever told you what the loan requirement would be, the maximum and minimum amount that would be required for a loan?

A. Mrs. Mapes never mentioned anything to me in regard to any amounts.

Q. You knew it was contemplated that the hotel building was to cost at least 800 thousand dollars, did you not?

A. That is right. In fact, the sheets showed it was more. I think it was 860 thousand or 865 thousand and you have another sheet, 885 thousand, offered in evidence here. I gave them to Mr. Platt. Those are Mr. Moorehead's figures.

Q. Have you considered the matter as to whether the hotel, costing 800 to 850 or 860 thousand, as you have mention, could be constructed under the cir-

(Testimony of P. G. Denson.)

cumstances with the finances available, plus a loan of 600 or 625 thousand?

A. If I remember correctly, I think that the financial statement that Mr. Moorehead made up, Mrs. Mapes was to put in 270 thousand dollars herself. I didn't estimate the cost of the building. Mr. Moorehead was the builder of it and was furnishing the figures. I did inform him that the figure he had set up to show the insurance company, 150 thousand dollars, wasn't anything like enough to furnish it but he insisted it would and I knew it wouldn't. [844]

Q. What figure was it finally decided upon necessary to furnish it?

A. At no time was there any amount. Charles and I had discussed it and I told Charles the proper amount was 250 and maybe 300 thousand dollars.

Q. Did you think that was enough?

A. My estimate on that ran from 250 to 300 thousand to furnish that place.

Q. Of course, the first figure you just mentioned of this 150 thousand, at that time was for a 10-story building?

A. That was not my figure at all, Mr. Cooke, and don't try to put that in the record.

Q. Just answer my question. At that time that was based on a 10-story building, wasn't it?

A. I believe it was, yes; in fact, I feel sure that it was.

Q. In reference to the clause about the income from the entire building, that is to say the clause

(Testimony of P. G. Denson.)

that was inserted there on October 4th, you remember that in the contract of September 24th?

A. Yes.

Q. I understood you to say that the reason for bringing that paper that you and Mrs. Mapes had discussed before coming to my office, was to have that clause written in and I didn't write it in?

A. At no time did I say I thought it was up to you. At no [845] time did I so testify.

Q. How did this paper come into my hands for redrafting?

A. You came to Mrs. Mapes' house that Sunday afternoon by request of Mrs. Mapes. I think Mrs. Mapes phoned you herself and we had been trying to get Mrs. Mapes to get you there all day, at least I had, and Saturday also, the day before.

Q. And the matter of my having the paper for redrafting purposes or changing in any way, how did that come up?

A. I am glad you asked that.

Mr. Cooke: I move to strike that.

The Court: That may go out.

A. Charles and I were discussing the agreement and Mrs. Mapes seemed to think for some reason or other we were trying—that I was, and of course, Charles was my partner—we were trying to get the rents of the stores and there was nothing in the contract that stated that. It was very plain and we were guaranteeing that her total income from the entire building would be sufficient to take care of

(Testimony of P. G. Denson.)

taxes and insurance, maintenance of the building, interest on the borrowed money and also amortize the loan over the life of the lease, 20 or 25 years, was the lease that we talked about, so finally I insisted on Mrs. Mapes sending for you and you came and I think that that sketch that we have, that has been so pencilled marked on there, Mr. Cooke, that you had and I was under the impression you were changing that in regard to taking out the taxes, [846] insurance and amortize the loan and all. Mrs. Mapes wanted just a straight percentage deal.

Q. Referring to that paper——

A. (Interrupting) The ones I brought I gave to you when you were in Mrs. Mapes' home Sunday afternoon, September 23rd, in her home.

Q. Do you mean the lead pencil interlineations and yellow sheet attachments were made at Mrs. Mapes' home?

A. I think you were making those changes there because I explained to you what Mrs. Mapes objected to, and I felt capable of explaining it to you.

Q. Well you said a while ago, as I understood you, the reason for submitting this paper to me was to put in the clause in regard to the income in figuring on the basis of the entire building and I didn't do it.

Q. It was given to you to take that clause out of it there and just make it subject to the rest of the agreement in regard to percentages and also

(Testimony of P. G. Denson.)

what percentage was called for in those rentals we had stipulated for each item was mentioned.

Q. Take what clause out?

A. The guaranty of her total income of the building, take care of taxes, insurance and upkeep of the building and interest on borrowed loan and to amortize the loan. That is the clause you were to take out.

Q. Where were Mrs. Mapes and yourself and myself at the time [847] you gave instructions to send the draft, or redraft, when I got it ready, to the Biltmore Hotel and endorse the envelope "Please Hold"?

A. Right in Mrs. Mapes' home that afternoon.

Q. It wasn't in my office?

A. It was not in your office, no sir.

Q. Where was the notation made that was interlined and initialed by you and Mrs. Mapes and Charles Mapes? Where was that made?

A. Where was it initialled?

Q. Well, yes, both.

A. In your office it was initialled on October 4th, when we all signed.

Q. How was it typed in there?

A. It was typed in just above there. It will speak for itself.

Q. I mean who typed it in, do you know?

A. Well, the one I have, the one you sent me, I typed that in and the one we all signed in the office was all type in.

(Testimony of P. G. Denson.)

Q. Where is the one sent to you that you typed?

A. It is here.

Q. Is that the one on file?

A. Yes, that is only signed by Mrs. Mapes, not signed by Charles, but witnessed by you and sent to me, mailed out of here on the 24th——

Q. (Interrupting) I am asking, Mr. Denson, about the condition [848] of this interlineation on October 4th. A. Yes.

Q. How many copies were interlineated with that clause about the entire building?

A. I presume that you interlineated the ones that you gave them, I don't know. The one that you gave me was typed in your office because that was the only one sent to me signed only by Mrs. Mapes. I think the check will show the difference in size of the type from the one I typed in before I took it to Mr. Al Gock. It will show for itself.

Q. In the envelope that was sent to you at the Biltmore Hotel with instructions to "Please Hold," I think you said there was just one copy of the proposed contract that was signed by Mrs. Mapes?

A. That is correct.

Q. You brought that back with you on October 4th? A. I had it too. I still have it.

Q. It is filed here now in the case?

A. Yes, but it has been in my possession all the time.

Q. That was never signed by the other parties, was it?

A. No; I have another one that was set up in

(Testimony of P. G. Denson.)

your office signed by all parties and witnessed by you and your secretary.

Q. Isn't it a fact that there were a number of other changes to be made in that tentative draft that you presented and that was the reason for my being called down here and discussing [849] the matter of this preliminary contract?

A. That was the only one there was any question about, was in regard to that particular clause that we just spoke of that was initialed.

Q. The one that you had a lot of blank lines in to be filled out?

A. Shall I tell what those blanks are for?

Q. No.

A. Well, we straightened the blanks out that afternoon.

Q. I am asking you a question—there were a number of blanks?

A. Dates and amount of money and also life of the lease.

Q. So those matters were discussed and the blanks filled out by lead pencil by me?

A. I presume you made it in lead pencil. I had to have blanks; I couldn't fill them in myself.

Q. The idea being the redraft should include what you had by way of contract, plus filling out of these blanks?

A. That was our idea, to fill those out. There was the amount of money to be deposited, life of the lease and also the date. Those are the three blanks if I remember correctly.

(Testimony of P. G. Denson.)

Q. You told us that you wanted this contract to show to a certain party. That certain party is Mr. Gock, is that right?

A. I don't think I so said I wanted the contract. Charles and I were supposed to get our contract from Mrs. Mapes. I don't think I told them I wanted the contract. As I stated [850] before, I wouldn't go to Mr. Gock to try to negotiate a loan unless I had a contract myself showing I was involved in the deal and was one of the partes.

Q. You didn't make a statement in my office, at a conference there, in answer to my question as to why it was proposed to have this preliminary agreement when you were going to agree upon a lease within a matter of ten days or so.

Mr. Platt: Just a minute, wait a minute. Mr. Denson has testified there was no conference in Mr. Cooke's office, your Honor, prior to October 4, 1945, when the agreement was signed. That questions assumes something not in evidence, that isn't in evidence.

Mr. Cooke: I might ask whether it isn't a fact.

(Question read.)

The Court: Is that your complete question, Mr. Cooke?

Mr. Cooke: Well, no, I hadn't completed it.

Q. —that you wanted this paper to show, or words to that effect, is that correct or not?

The Court: Objection overruled. Answer the question.

(Testimony of P. G. Denson.)

A. There was no such conversation at all, Mr. Cooke, in your office in regard to the contract. The only thing about it, I showed you where I typed in in regard to that clause. There was nothing said about any preliminary agreement, about drawing a lease, except what I spoke about the lease when I made my deposit. [851]

Q. Will you answer the question—was there any such conversation?

A. No such conversation.

Q. Isn't it a fact that you had urged upon Mrs. Mapes on a number of occasions to give something in the way of a contract for you to show before Mr. Gock was in the picture at all?

A. I didn't urge Mrs. Mapes at no time.

Q. What were you doing there those three days, were you talking about this contract or hotel business.

A. I would like to answer that.

Q. Were you talking about hotel business?

A. I met Charles in Sacramento on the 21st, on a Friday. He drove his car, I drove my car. Charles had phoned to me to make an appointment for he and I to come over and get our contract with his mother. We met in Sacramento. We had dinner. Charles wanted to stay longer than Saturday morning, so therefore we drove both cars. We arrived to visit with Mrs. Mapes that evening and I told Mrs. Mapes that I wanted for her to get hold of her attorney and let us get our agreement fixed up, that is the agreement that I had with her, and Mrs. Mapes insisted that I stay over. I kept

(Testimony of P. G. Denson.)

trying to tell her that I should go back, that I had a lot of things to attend to, and to get hold of her attorney—I didn't even know you, Mr. Cooke, didn't know who her attorney was—so I finally agreed to stay over and Mrs. Mapes and I took a ride that morning and that afternoon Gloria and I and Charles all went to the football game and then she entertained us at cocktails that evening and had some friends for dinner she wanted me to meet, so we all went to dinner. All Sunday morning we tried to get together to get this contract signed, so that I could leave. I urged Mrs. Mapes to get her attorney so she could see what it was. I didn't see that there was anything complicated about it. There was no trickery in it because I don't deal that way. That was why I was there Friday evening, all day Saturday and all day Sunday until four o'clock until that Sunday afternoon.

Mr. Cooke: I move to strike the answer as not responsive.

The Court: It may stand.

Q. I will ask you again, what were you doing these three days if you were not talking about the hotel and the contract?

A. I think I stated.

Q. Have you anything further to add?

A. Nothing further to explain. Constantly urging and finally Charles did tell his mother in the afternoon, he said, "Mother, I think we ought to get together." I said I didn't want Mrs. Mapes to

(Testimony of P. G. Denson.)

sign up anything unless she was represented by counsel, Mr. Cooke.

Q. Well, have you answered the question now fully?

A. I think I have answered fully what I was doing all that time. [853] If you would like to know where we went, I think I can explain it to you.

Q. You testified on your direct examination that Mrs. Mapes never sought an interview with you in regard to your getting together on drafting of a final lease?

A. That is correct. At no time did Mrs. Mapes ever try to get together in drafting a final lease.

Q. How about you, did you ever try to get together with her?

A. I did not. The only time I spoke about it was when I gave my check for ten thousand dollars. I know they were there but it seems no one heard it.

Q. And at that time I think you testified you said for me to go home and draw the lease?

A. I said, "Mr. Cooke, any time you want to draw the lease, I am ready to sign", and I have always been ready to sign it, Mr. Cooke.

Q. You said that to me?

A. Yes, but no one seems to have heard it; in your office when I gave my check for ten thousand dollars.

Q. The only discussion in regard to the lease was the clause of this entire building?

A. The only discussion about the document was

(Testimony of P. G. Denson.)

what Mrs. Mapes objected to, as I stated, and no discussion about the thing at all in your office, but simply to initial what I had inserted in there and everybody signed and you witnessed all the signatures, [854] accepted by ten thousand dollars, gave me a receipt——

Q. Yes, yes.

A. Well, what more do you want?

Q. I just asked you if you made that statement to me?

A. I told you what took place in your office and that is all that was said.

Q. Did it occur to you that I had sufficient information or data from either you or Mrs. Mapes to draw a lease?

A. There would be sufficient data from that document itself for any one to draw a lease from. I am perfectly familiar with leases, Mr. Cooke, I have drawn them myself.

Q. The lease provides further and additional matter inserted for protection of the parties.

A. I would never want any lease whereby the lessor was not protected just the same as the lessee.

Q. You are not answering my question.

Mr. Platt: Objected to as argumentative. I don't know why legal propositions——

The Court: That is a question for a legal opinion.

Mr. Cooke: Well, my thought was that he made the statement that he told me to go ahead and draw

(Testimony of P. G. Denson.)

the lease, to find out whether he knew or assumed I had sufficient data to draw a lease.

The Court: He already answered that. He said he thought you did. [855]

Q. Why do you make that statement?

Mr. Platt: Objected to——

The Court: Objection sustained.

Mr. Platt: That is to the previous question.

A. Just state the question you are asking me now.

Q. You testified repeatedly you said to go ahead and draw the lease and you were ready to sign it, or words to that effect.

A. I did not make that statement.

Q. What was the statement? Let us get that straight.

A. I said, "Now, Mr. Cooke, the next thing to do, any time you want to draw the lease, I am ready to sign." I didn't say, "You go ahead and draw the lease." I didn't say that.

Q. The statement is——

A. (Interrupting): I said I was ready to sign the lease any time it was drawn up and I was and I am yet.

Q. You knew the only conference I had with you and Mrs. Mapes in regard to what was to go into this preliminary agreement was the meeting we had that day?

A. September 23rd was the only time I met with you.

(Testimony of P. G. Denson.)

Q. You are familiar with leases?

A. Yes.

Q. And the matter of drawing leases?

A. Yes, I think I can draw leases very intelligently. I have drawn them.

Q. I would like to ask you a question, whether you believed, [856] when you said you were ready to sign the lease any time I had one drawn, that I had sufficient information or data in regard to drawing a lease as to what you and Mrs. Mapes had agreed upon?

A. Knowing you were an attorney, I don't think any attorney would attempt to draw a lease that was not fair to his clients and also to the lessees, of you are representing the lessors, because Charles and I would have been the lessees, and I felt that lease would have been drawn that would have been fair, would cover all laws of the State of Nevada, city and county and everything else. Those are always embodied in any lease.

Q. That is the only answer you have to that question?

A. I think that is the only answer I have to that question, yes.

Mr. Cooke: I think that is all.

Re-Direct Examination

By Mr. Platt:

Q. Just one matter, Mr. Denson. There was some testimony given to the effect that a paper or document was submitted by you to Mr. Cooke as

(Testimony of P. G. Denson.)

a basis for his drawing the final agreement; that there were certain blank spaces to be filled in and that was the condition of the paper which you handed Mr. Cooke? A. That is right.

Q. Well, now, when you received the agreement signed by Mrs. [857] Mapes at the Biltmore Hotel in Los Angeles on September 25, 1945, were all the blank spaces filled in?

A. May I answer that in regard to those blanks, what they were?

Q. Will you answer the question?

A. Yes, the blanks were filled in.

Q. Now you didn't fill in those blanks?

A. I didn't, no.

Q. When the paper came to you from Mr. Cooke's office, all those blank spaces were filled in?

A. They were all filled in.

Q. And when the document or the contract or agreement in evidence here was signed by all of you, there had been no change made at all as to the filled-in blank spaces? A. No changes, no.

Q. In other words, the filled-in blank spaces remained just as they were when you received the paper from Mr. Cooke's office?

A. Absolutely.

Mr. Platt: I think that is all.

Mr. Cooke: That is all.

Mr. Platt: If the Court please, we wanted to ask Mr. Moorhead a few additional questions and we phoned him yesterday. I did not do it personally, but Mr. Denson and Mr. Sinai did and he is still

indisposed and said he couldn't be [858] here. Outside of his testimony, I think that is our case in chief, your Honor.

The Court: What is the nature of his illness? Is he required to be absent for some considerable time?

Mr. Sinai: Well, the information I had through a letter from him and also from a phone conversation with him, he had ear trouble, trouble with his ear.

Mr. Cooke: I think that is it. It is some serious ear trouble.

The Court: Do you suppose now a statement from Mr. Platt what he expected to prove from Mr. Moorehead, you could stipulate as to what he would testify?

Mr. Cooke: Of course, I don't know, but I would be willing to consider the matter and to so stipulate unless he is——

The Court: Would you be willing?

Mr. Platt: Yes, your Honor. I will have to have a little while to prepare it.

The Court: Then with that understanding the plaintiff rests.

(Short recess.)

The Court: Are you ready, gentlemen?

Mr. Cooke: I wish to offer in evidence carbon copy [859] of letter dated June 17, 1946, from myself addressed to P. G. Denson, care of Platt & Sinai, First National Bank Reno, Nevada, together

with reply thereto on letterhead of Platt & Sinai, dated the same day, signed Platt & Sinai.

Mr. Platt: We have no objection.

The Court: It may be admitted in evidence as Defendants' Exhibit 2.

Mr. Cooke: The letter first mentioned is dated June 17th, 1946, and reads: (Reads letter.) I am reading from carbon copy of the letter. There is notation, "Enclosure 1". The reply thereto from the office of Platt & Sinai, dated the same day, reads: (Reads letter.)

Call Mrs. Mapes.

MRS. CHAS. W. MAPES

having been previously sworn, testified as follows:

Direct Examination

By Mr. Cooke:

Q. How long have you lived in Nevada, Mrs. Mapes? A. About 30 years.

Q. And was all of that time spent in Reno; that is, you have lived in Reno, that is your home?

A. Yes.

Q. And your husband was Charles W. Mapes, Sr.?

A. Yes.

Q. He died when? [860]

A. The day after Christmas in 1937.

Q. From the time you were married to him until he died he was engaged in the banking business

(Testimony of Mrs. Chas. W. Mapes.)

here in Reno, was he not? A. Until he died?

Q. Yes. A. No, up until 1929.

Q. That was the Washoe County Bank that he was connected with?

A. Yes, his father was one of the founders and he worked in the bank up to be the president of the bank.

Q. Do you know what office, if any, he held in the bank?

A. He was president of the Washoe County Bank.

Q. A Reno banking institution at that time?

A. Well, it was one of the very first, the oldest.

Q. In Reno?

A. Yes, right where the Ramos Drug Store is at the present time.

Q. Prior to your marriage, where did you live, prior to your residence in Nevada?

A. In Staten Island, New York City.

Q. During your residence in Staten Island, did you have occasion to come in contact with the matter of construction of buildings to any extent, directly or indirectly?

A. Yes, that was my family's business and my brother at the present time is one of the outstanding builders.

Q. Your brother is William S. Hart? [861]

A. Yes.

Q. And he has been here in Reno a number of times?

A. Five times since work has started.

(Testimony of Mrs. Chas. W. Mapes.)

Q. Did you have the benefit of his advice or aid or assistance in any way in the construction of the Mapes Hotel building? A. Yes, I have.

Q. He has been here five times?

A. And he is ready to come out now right after Christmas.

Q. Since the hotel started construction or since the matter of getting under way for construction, or what? When was it that he was here?

A. During the construction of the building.

Q. Well, can you give us an idea about what time he spent here during that time, the aggregate of these four or five times altogether?

A. He took on the general management of it. I think you can go over and talk to any one of the men working on the building and they highly regard him as——

Q. (Interrupting): That isn't what I asked you Mrs. Mapes. About how much time did he spend in connection with his work here?

A. All of his time with the exception of what little recreation he would have.

Q. How much was all of his time? Just give us an estimate. [862]

A. It is awfully hard to be definite, but each time he came he spent about three weeks or longer.

Q. He spent about all of that time on the hotel?

A. Yes, on the hotel; changed the plans.

Q. Did he discuss, so far as you know, the construction of the building and plans and specifica-

(Testimony of Mrs. Chas. W. Mapes.)

tions or the like, with Mr. Moorehead and Mr. Slocum?

A. Yes, he did, and they recognized his suggestions.

Q. His suggestions were adopted.

A. Yes. Our present superintendent begged him to stay right here with him, which has been the only superintendent we have had.

Q. There has been testimony introduced here that the matter of constructing a hotel on that lot started away back even before your husband died?

A. Yes.

Q. And it has been under way in one form or another since that time? A. Yes.

Q. And in 1940 you had some conferences with Mr. Denson and other people? You remember the testimony there in regard to the proposed hotel construction?

A. Yes, my conferences in 1940 were mostly with Mr. Huckins. All the matters that were interchanged and all conversations [863] were practically with Mr. Huckins.

Q. What I am getting at, Mrs. Mapes, is that you and those associated, interested with you, have had the matter of this hotel construction under consideration for years? A. Yes.

Q. During that time how many different plans, can you give us any idea, you have had under consideration?

A. May I say about four or five different sets, five or six different sets of plans.

(Testimony of Mrs. Chas. W. Mapes.)

Q. Did that mean different types of buildings and so on? A. Yes.

Q. How were those matters handled? Were they discussed and considered by you and the other members of your family and your brother, Mr. Hart, and so on?

A. I do not think I went deeply into it with any of the family on plans.

Q. Just yourself?

A. Just the hotel we were considering, whether there was any merit to it or not.

Q. That is the way this thing went along from this date you told about, 1940, down to the time of September 24, 1945, for instance, is that right?

A. Yes.

Q. The original plans, in sketchy form at least, was for a 10-story building, that is correct, isn't it?

A. Yes.

Q. At an estimated cost of 800 thousand dollars?

A. About that, yes.

Q. Or thereabouts? A. Thereabouts.

Q. When was it changed from that cost figure and from ten stories to what it is now, 12 stories? When was that change made? A. This year.

Q. What time this year about? Give us your best recollection.

A. I would rather not give you, but I can definitely find out. It doesn't come to me right at this time.

Q. Regardless of what particular time it oc-

(Testimony of Mrs. Chas. W. Mapes.)

curred, how did it occur, with regard to who decided upon the change? A. I did.

Q. By yourself?

A. Well, with Charles and Mr. Moorehead and Mr. Slocum. I wanted the heighth of the building at a later date so we could go up on the First Street side and make it a "U".

Q. Was Mr. Denson consulted in any way in regard to the proposed change? A. No.

Q. Why not?

A. I believe he was out of it. I don't recall whether he was or not. I would have to go into that, Mr. Cooke, if you want [865] it as a sworn affair.

Q. Well, your recollection now is you don't recall whether he was or not, is that right?

A. Yes.

Q. But you were the one, as I understand your testimony, that decided on it?

A. I want to say definitely that he wasn't, as I recall.

Q. You want to say that he wasn't?

A. I think I am correct there. I would have to check it.

Q. He wasn't consulted, you mean?

A. Wasn't consulted.

Q. Well, that is your best recollection?

A. Yes.

Q. Did the idea of increasing from 10 to 12 stories originate with you or was it suggested by anybody?

A. It was my idea. It was my idea to get the heighth of the building a certain heighth.

(Testimony of Mrs. Chas. W. Mapes.)

Q. From what source, if you know, was the figure of about 800 thousand estimate for the 10-story building obtained?

A. Well, as I recall, it was just a rough figure to see what was going into the building and about the cost. That was Mr. Moorehead's idea.

Q. Was he the one that suggested the 800 thousand or about that?

A. About that, yes. There wasn't anything definite on it. [866]

Q. Do you know what additional amount of the estimate for the building was created, that is to say, what additional amount was contemplated, for the extra two stories after you decided on that?

A. Yes, it was over 200 thousand.

Q. For the two stories? A. Yes.

Q. Well, instead of the estimate of 800 thousand or thereabouts, what, so far as the building itself is concerned, is it going to represent in cost?

A. The present cost of the building?

Q. Yes. What is the building going to cost completed, if you know?

A. Well, we have borrowed on it 12 hundred thousand and we are putting 450 thousand of our own money into it.

Q. That makes 1650 thousand? A. Yes.

Q. And that takes in the cost of construction of the building. Does that include the furnishings?

A. That would be extra.

Q. In addition to that? A. Yes.

Q. You heard testimony of Mr. Denson, I think

(Testimony of Mrs. Chas. W. Mapes.)

he said somewhere around 250 to 300 thousand, thereabouts?

A. Well, I think it might be right to say around 400 thousand [867] for furnishings.

Q. So that would make two million fifty thousand?

A. I will take your addition, Mr. Cooke.

Q. For the final construction and furnishings of the building?

A. Yes.

Q. Complete?

A. Yes.

Q. And that does not include the lot?

A. No.

Q. What is the value of the lot, if you can tell us?

A. Well, I put a value on it of 300 thousand. I was offered more than that for it though.

Q. That is the value that you have on it?

A. Three hundred thousand.

Q. That would make a total then of two million four hundred fifty thousand?

A. If your addition is correct.

Q. Well, I don't guarantee it. The 800 thousand estimate that you have testified about, Mrs. Mapes, did not include anything, as I understand, for the lot. That was just construction of the building?

A. Yes.

Q. And it did not include anything for furnishing?

A. No.

Q. Just simply a 10-story building? [868]

A. Yes, and that wasn't a permanent figure at

(Testimony of Mrs. Chas. W. Mapes.)

that time. It couldn't have been a permanent figure at that time.

Q. I understand, it was a tentative estimate?

A. Tentative.

Q. Rather rough estimate, wasn't it?

A. Very rough.

Q. Now from the time that matter of constructing the hotel building, or a hotel building, on the lot first came up, have you been in close contact with the subject matter and had discussions with various parties?

A. I have until the actual construction started and then I depended since then on my son to represent me, but Mr. Moorehead and I all the time talk on plans and corrections and additions.

Q. Well, the testimony shows that you made numerous trips and had numerous conferences with the architect and with the construction engineer, Mr. Moorehead? A. Yes.

Q. Kept in close touch with the subject matter right along? A. Yes.

Q. You hear Mr. Denson's testimony this morning that at no time did you ever speak to him, either on the telephone or otherwise, about you and he getting together on a final lease, as contemplated set forth by the September 24th agreement. You heard that testimony? [869] A. Yes, I did.

Q. Have you anything to add to the testimony you have previously given as to the various times and occasions that you did ask him to come to Reno and get together on a lease?

(Testimony of Mrs. Chas. W. Mapes.)

A. Only those times that we were together I was continually after him to get together on this agreement and draw up our lease, I was continually after that.

Q. This agreement and draw up your lease?

A. Yes.

Q. You refer to the agreement in addition to the lease—you are talking about agreement between him and Charles?

A. He and my son Charles were to get together and agree.

Q. I think I asked you——

Mr. Platt: (Interrupting): I submit, your Honor, I am sorry, but the question referred to the lease contemplated by the agreement and the answer with respect to an arrangement between Charles and himself.

The Court: That portion of the answer with the exception of anything in regard to the lease may be stricken.

Mr. Platt: I don't like to object and I have made but very few objections, but I do not think the answer is responsive.

Mr. Cooke: Well, at various times in your testimony you referred to agreement and you also mention a lease. What [870] do you mean?

A. Well, my son Charles and Mr. Denson were to get together to agree on their association so that we could draw up a lease on the management and how the hotel was to be handled, etc., like that. You

(Testimony of Mrs. Chas. W. Mapes.)

couldn't just give a lease when you didn't know who or what was what.

Q. When you used the term agreement, as you have at various times, you were referring to the agreement or arrangement between your son and Mr. Denson?

A. Yes. That was understood before, in my presence, that is why I knew about it, Mr. Cooke.

Q. If you had supposed that you would be called upon to give a lease to Mr. Denson alone—did you ever consider that? A. Absolutely not.

Q. To what extent did Charles figure in it, insofar as it being the principal subject of your interest?

A. Knowing our background, knowing our financial background, I was interested in Charles being interested in the hotel.

Q. Well, is it true that all these different years that you told us about that you were planning and finally determined on building a hotel was for his benefit primarily? A. I told you that.

Q. Gloria was to have some——

A. (Interrupting): Well, she was to have some financial part of it. I can't be one-sided with one child. [871]

Q. In reference to Gloria, in any of the conversations you had with Mr. Denson, either in your home at Reno or in the city—I have reference to the one at the Drake Hotel or the Fielding, or any of them where Gloria was with you, can you say

(Testimony of Mrs. Chas. W. Mapes.)

whether or not the matter of a lease, or proposed lease, from you to Mr. Denson and your son Charles was discussed in the presence or hearing of Gloria?

A. No.

Q. It was not? A. Never, no.

Q. She is how old now?

Twenty-one, almost 22.

Q. And during the fall of 1945 or in September, October and November, what was she doing?

A. Well, she was attending our University and my daughter is very active, both on the campus and off the campus and we see very little of her at home. In fact, she has classes at eight o'clock. She leaves home before eight, she returns home in time for dinner and after dinner there are always meetings or we have business at the library or socials.

Q. On the occasion that Mr. Denson was at the house for two or three days, if I am not mistaken in January, January 25, 1946, do you remember whether Gloria was present at any discussions at which the business of the hotel came up?

A. No, she wasn't. [872]

Q. Does she ever participate in the business discussions of the hotel or any other business transactions?

A. Well, not to any great extent. She has in some things. I have asked her to sit in when she was at home and had the time.

Q. Now in September, 1945, September 23rd and

(Testimony of Mrs. Chas. W. Mapes.)

24th and that immediate period, was she attending school at that time, as you have stated?

A. Yes.

Q. When Mr. Denson was down at the house?

A. Yes, she was.

Q. That was before this September 24th paper was signed? A. Yes.

Q. And there were some discussions and conferences had there at which you were present and Mr. Denson was present and I was there for a time, down to your house, do you remember that?

A. Yes. The only discussion about this paper was that evening before you came, if that is the correct date, with Mr. Denson and Charles and myself. Gloria wasn't at home.

Q. That is what I was going to ask you, if she was there at any time?

A. No, she wasn't there.

Q. And from then on for the next several months are you in position to say whether or not she had any actual knowledge or notice of Mr. Denson and your son Charles having some [873] kind of agreement in regard to a lease on that hotel building?

A. I do not think she knew anything about it until about April.

Q. April, 1946? A. Yes, 1946.

Q. Do you know how she learned of it at that time?

A. Well, this little disagreement, or whatever you want to call it, came up and we were discussing that and she would ask what it was, what was the

(Testimony of Mrs. Chas. W. Mapes.)

trouble and I think I explained to her at that time.

Q. I think you already testified about what Mr. Denson told you in regard to his sale of the hotel in Visalia.

The Court: If you are about to start another subject, Mr. Cooke, we will take our noon recess until 2:00 o'clock.

(Recess taken at 12:00 noon.)

Afternoon Session, December 18, 1946, 2:00 p.m.

Appearances same as at previous session.

Mrs. Mapes resumed the witness stand on further direct examination by Mr. Cooke.

Q. Mrs. Mapes, do you know from present plans of the hotel building what the garage capacity will be? A. About 70 cars. [874]

Q. That would be in the basement?

A. In the basement.

Q. This preliminary agreement of September 24, 1945, states that if the garage is to be included in the lease when drawn, 10 per cent of the gross proceeds are to be paid by the lessee, Mr. Denson and Charles W. Mapes, Jr., to you, while if it is leased to somebody else, then Mapes and Denson shall have the right to have garage space reserved for the use of their guests on such terms as may be agreed upon. Do you remember that clause in the agreement? A. Yes, I do.

Q. Was it ever discussed between you and Mr. Denson and your son Charles as to what charge, if

(Testimony of Mrs. Chas. W. Mapes.)

any, should be made on cars that were stored or had garage service? A. No.

Q. Do you recall anything being said at all by either your son Charles or Mr. Denson about the garage subject other than stated in the paper itself?

A. No.

Q. You say that the garage will have a capacity of about 70 cars. Would that be sufficient, do you believe, from all that you know about the operation of the hotel, etc., to satisfy the hotel service itself, or would there be space to rent out taking in other cars?

A. Well, it wouldn't be sufficient to carry the hotel itself, [875] no.

Q. In other words, the hotel people will need all the garage service and space? A. Yes.

Q. What about other service of cars arranged for in the basement, such as gasoline and the like of that? Has anything been decided about that as part of the garage?

A. Just if it were necessary. I don't think it has ever been discussed, no. It has never been discussed, the garage hasn't, in any way.

Q. You say 75——

A. (Interrupting) I say about 70.

Q. About 70 cars and it would be barely sufficient for the hotel customers. Does that mean it would be capacity full all the time, in your opinion?

A. Yes.

Q. Is that what you mean to say? A. Yes.

(Testimony of Mrs. Chas. W. Mapes.)

Q. I think you told us, or started to tell us, in previous testimony about some conversation you had with Mr. Denson about the Visalia hotel in which he said something about he was on a deal to sell it. Do you remember when you first heard that subject discussed?

A. When Mr. Denson first came to see me in '44 he told me at that time that he planned to sell the lease on his hotel, that [876] he wanted to get out of Visalia and that this was a seller's market and a very good opportunity to sell.

Q. Did he say anything about selling on the basis of loss or profit?

A. No, it was a profit. I think at that time he was talking about one or two places he was going to go in business. I am sorry I can't tell you the names.

Q. That was in 1944?

A. That was in 1944.

Q. Was the subject of the sale of his hotel discussed at any time after that?

A. Then he told me, I believe, in November of '45, was the first I heard of the hotel sale again, when he said he thought he had somebody to purchase his hotel.

Q. Did he have anything to say whether that sale was on the basis of loss or profit?

A. He told me at that time it was a pretty good sale.

Q. He didn't mention any figures?

(Testimony of Mrs. Chas. W. Mapes.)

A. Not exactly figures, but I thought it was around 40 or 50 thousand he had made on it.

Q. That was in November, you think, of 1945?

A. Yes.

Q. Did you hear any discussion—

A. (Interrupting) No, that was later. He didn't discuss that but the first I had heard of his sale, that he had an opportunity [877] to sell his place, was in November of 1945. That was the first I ever heard after that conversation in 1944.

Q. When was the conversation had at which he mentioned about what he expected to make out of it?

A. I think when he was here in January.

Q. '46? A. Yes, '46.

Q. Do you remember anything about what he said on that subject at that time?

A. Well, he was pretty well satisfied with the sale.

Q. I asked you to state what he said.

A. I don't recall the conversation on it.

Q. That was the tenure of it as near as you can recall? A. Yes.

Q. In your previous testimony, in reference to the matter of the co-partnership certificate, Mr. Platt asked you some questions in regard to it and you said that it was registered in Carson City. Do you remember that? A. Yes.

Q. What makes you say it was registered in Carson City.

A. Well, I don't know why I said it, Mr. Cooke. You handled that for me.

(Testimony of Mrs. Chas. W. Mapes.)

Q. It is registered by the country clerk here.

A. Well, I am sorry, I know it is registered and if there is any question about its validity, we could check that. [878]

Mr. Cooke: That is all.

Cross-Examination

By Mr. Platt:

Q. Mrs. Mapes, there was offered in evidence here—I make this preliminary statement in order that you understand the question that I propose to ask you—there was introduced in evidence here a letter dated June 17, 1946, signed by your attorney to us, offering to return the ten thousand dollar check which Mr. Denson had deposited. There is also in evidence here that on the 10th of April, while Mr. Denson was in Mr. Cooke's office, Mr. Cooke told Mr. Denson that he was satisfied Mrs. Mapes would not go through with the lease. May I ask you whether you told Mr. Cooke to tell Mr. Denson that?

A. I asked Charles—yes, I asked Charles, my son—shall I go ahead?

Q. Well, answer the question. A. Yes.

Q. How long before April 10, 1946, had you made up your mind that you wouldn't go through with the contract?

A. On April 10, 1946.

Q. That is that you made up your mind on that day? A. Definitely on that day.

(Testimony of Mrs. Chas. W. Mapes.)

Q. And you hadn't made up your mind before that?
A. No.

Q. Well, do you know why there was delay from April 10, 1946 to June 17, 1946 in offering to return the ten thousand dollars? [879]

A. Well, I believe it was offered once before, Mr. Platt.

Q. You believe it was offered once before?

A. To Mr. Denson's attorney in San Francisco. Mr. Young, I believe the name was.

Q. That is all hearsay on your part?

A. No, I know it was.

Q. Now you were there?

A. Well, I think Mr. Cooke has some correspondence to that effect.

Q. Well, there isn't anything in evidence to that effect, is there?

A. Not that I know. This is the first time it has been asked.

Q. But you are positive that there was no offer made, at least in Reno, for the return of that ten thousand dollars until June 17, 1946?

A. April 10th.

Q. Well, you don't mean to say, do you, Mrs. Mapes, that on April 10th, when you made up your mind you weren't going through with the contract, that this offer to return the check to Mr. Denson was made to anybody?
A. Yes.

Q. To whom?

A. To Mr. Denson, through Mr. Cooke. That would be hearsay, I didn't hear that one, no.

(Testimony of Mrs. Chas. W. Mapes.)

Q. Well, did Mr. Cooke tell you that on April 10th, when Mr. [880] Denson appeared in his office and Mr. Cooke told him that he was satisfied Mrs. Mapes would not go through with the contract or would not give a lease, that he told Mr. Denson then and offered to return the ten thousand dollars?

A. With interest.

Q. Did Mr. Cooke tell you that?

A. Well, I had informed Mr. Cooke that that was what I was willing to do and I understood he did do it.

Q. Did Mr. Cooke tell you that he made that offer? A. Yes.

Q. When did he tell you that?

A. Either that day or the next day.

Q. And where? A. In his office.

Q. Did he tell you to whom the offer was made?

A. To Mr. Denson.

Q. In person? A. In person.

Q. Do you know why it was that Mr. Cooke waited from April 10th to June 17, 1946 to make the offer to Mr. Denson's attorneys to return the check?

Mr. Cooke: Objected to as irrelevant and immaterial.

The Court: Objection overruled.

A. Well, I think I said before, Mr. Platt, that there was an offer made to Mr. Young, Young & Rabinowitz, or something like [881] that. I have the envelope at home.

(Testimony of Mrs. Chas. W. Mapes.)

Q. I am afraid, Mrs. Mapes, you are not answering my question. I will ask the reporter to read it.

(Question read.)

A. Well, when you speak of Mr. Denson's attorneys, is that your firm, Mr. Platt?

Q. Yes.

A. I think I explained before that we offered it to another attorney. Now that date I haven't, but I think it would be very easy to check.

Q. In any event, that is hearsay on your part? You didn't make the offer?

A. No. I had my attorney make the offer.

Q. Did you ever tell Mr. Denson personally at any time that you would not go through with the contract and would not grant him a lease?

A. I told him no, that I wouldn't because the lease was supposed to have been with my son and he and my son refused to enter into the lease.

Q. May I again have the question read and if you don't understand it, tell me and I will try to make it clear.

(Question read.)

A. Yes.

Q. Where did you tell him that?

A. I told him through my attorney, Mr. Cooke.

Q. Well then are we to infer from that that you never told him personally that you wouldn't go

(Testimony of Mrs. Chas. W. Mapes.)

through with the lease or wouldn't grant a lease, but did tell him through your attorney?

A. I wouldn't grant him a lease——

Q. (Interrupting) Pardon?

A. I beg pardon. I told him through my attorney. That is the answer.

Q. Then personally you never told Mr. Denson personally, to his face, that you wouldn't go through with the contract and that you wouldn't grant him a lease?

A. No.

Q. In your direct examination, Mrs. Mapes, you made reference to a statement made, the statement that you were associated with a family of builders and contractors, and I think you stated your brother was a contractor?

A. Yes.

Q. Mr. Hart is his name?

A. Yes.

Q. And you also stated that Mr. Hart, your brother, had spent a great deal of time here in Reno during the construction of the hotel?

A. Yes.

Q. Did you ever discuss with your brother the contract that you had with Mr. Denson?

A. No. [883]

Q. Never did?

A. No.

Q. You are sure about that?

A. Yes.

Q. Do you know whether Mr. Denson met your brother here in Reno, Mr. Hart?

A. He was here in the living room that day, April 10th, in my home.

Q. Do you know whether Mr. Denson met your brother before that time in Reno?

A. Yes, they met in San Francisco.

(Testimony of Mrs. Chas. W. Mapes.)

Q. I mean in Reno. We will come to San Francisco later.

A. No, I think that was the first time, just that first of April.

Q. Do I understand you to say that your brother met Mr. Denson in Reno on April 1st?

A. No. When they were down—I think it is in the testimony, Mr. Platt, that they met in San Francisco. That is when they met for the first time.

Q. What I am talking about now——

A. (Interrupting) That would be the latter part of March or the first of April.

Q. Do you know whether Mr. Denson met your brother, Mr. Hart, here in Reno at any time?

A. Yes. [884]

Q. When? A. April 10th in my home.

Q. April 10th. Who were present at that meeting?

A. My brother, William S. Hart, Mr. Denson, my son Charles, and myself.

Q. That was after you determined to repudiate—excuse me, your Honor, for using that word—that was after you determined not to go through with the contract and not to give a lease?

A. No, that was before.

Q. Well, didn't I understand you to say, Mrs. Mapes, that you decided on April 1st, 1946, not to give a contract?

A. No, Mr. Platt, if I said that, I am sorry. I said April 10th. If I have given you that to think about, I am sorry, but it is April 10th.

(Testimony of Mrs. Chas. W. Mapes.)

Q. Well, possibly I misunderstood you, I don't know. I thought you said April 1st.

A. It was our idea to have Mr. Denson come here on April 10th to see if we could get together and smooth this out and it was after Mr. Denson told me that I begged him to take my son that to my notion I could see my son was right in the deal. That is what he told me then.

Q. Then as I understand your testimony as just given, right up to April 10th you were ready to get together with Mr. Denson—— [885]

A. (Interrupting) Yes.

Q. (continuing)—if you could agree on what had to be agreed upon?

A. Yes, if he and Charles would take the lease, I was ready to go ahead with the lease with my son and him.

Q. Do I understand further, or that I may not misunderstand you, that on April 10th you were ready to go through with the contract providing arrangements could be made satisfactorily between Mr. Denson and your son Charles? A. Yes.

Q. Now there is no question about that?

A. There isn't any question about April 10th. The first part of the morning of April 10th I had come into that meeting ready to go through with the contract with Mr. Denson and my son if they were together on it.

Q. I think you stated, Mrs. Mapes, that Mr. Denson had met your brother, Mr. Hart, in San Francisco? A. Yes.

(Testimony of Mrs. Chas. W. Mapes.)

Q. And you know that of your own knowledge?

A. Yes.

Q. Do you know when those meetings occurred?

A. I don't know only what they told me. That was before they returned home on that day.

Q. Well, again I don't want you to misunderstand me. Do you know that your brother met Mr. Denson in San Francisco of your [1886] own knowledge, or do you know it through hearsay?

A. I just know it through hearsay, what they told me.

Q. Were you or were you not in San Francisco at any time in the presence of your brother and Mr. Denson?

A. No.

Q. Who told you that your brother had met Mr. Denson in San Francisco?

A. My brother told me what he had done. It is more or less on a party scale. He was telling me, in fact, he put on a clever stunt of the Gay 90's he had seen down there.

Q. Did your brother also tell you that they met Mr. Denson at Mr. Moorehead's office on the first day of April in Oakland?

A. No, I don't know if my brother was there.

Q. Do you know whether he was or not?

A. No, I don't.

Q. Do you know whether he was in Reno on the first of April?

A. No, he was down in the city while my son was down there.

(Testimony of Mrs. Chas. W. Mapes.)

Q. You do know that Mr. Hart was in California and not in Reno on April 1, 1946?

A. Yes.

Q. Did either your brother or your son tell you that Mr. Hart was present when Miss Mason was present and they discussed the lay-out and fixtures that were to go into the hotel? A. No.

Q. They didn't tell you that? [887]

A. No, it wasn't discussed.

Q. You say you didn't know anything about it?

A. Know about what?

Q. About your brother being at that conference in Mr. Moorehead's office in Oakland, California on April 1, 1946? A. No, I didn't.

Q. Would you tell us, Mrs. Mapes, when your brother came to Reno, Nevada, when the hotel was in process of construction? A. In March.

Q. In March? A. Yes.

Q. 1946? A. 1946, yes.

Q. And I assume that you had the benefit of his counsel and advice during that period?

A. Yes.

Q. Do you know whether your brother had any knowledge of the agreement that had been entered into between you and Mr. Denson and your son?

A. No.

Q. Are you certain he had no knowledge of such an agreement?

A. I am certain he didn't have, as far as I am concerned, any knoweldge of the agreement.

(Testimony of Mrs. Chas. W. Mapes.)

Q. I understand from your testimony that if he had any knowledge you didn't convey that knowledge to him? [888]

A. Well, you ask me if I know if he had any knowledge. I never discussed it so I wouldn't know. I think that makes it clear, that I wouldn't know of his having any knowledge. Is that clear? I am sorry I can't be clearer.

Q. Yes, that is quite clear. That is, summing it all up, you never told your brother that you had this agreement or contract with Mr. Denson?

A. No.

Q. And you never discussed that with him?

A. No, I never discussed that with him.

Q. You are familiar, Mrs. Mapes, with the answer signed by your attorney to the amended complaint that is filed here? A. Yes.

Q. You are familiar with the contents?

A. Yes.

Q. Do you recall in that answer that there is a clause that on November 5, 1945, you conveyed a third interest in this hotel property to your daughter Gloria? A. Yes.

Q. Well it is a fact, isn't it, Mrs. Mapes, that you did not convey a third interest to your daughter Gloria, but you conveyed it to a partnership known as the Mapes Company and consisting of you, your son and your daughter?

A. No, I conveyed to my daughter and my son and myself. The company was never entered into it.

(Testimony of Mrs. Chas. W. Mapes.)

Q. Well instead of doing as the answer alleges, that you conveyed it to your daughter——

A. (Interrupting) Yes.

Q. (Continuing) ——you now say that you conveyed it to your daughter and your son and yourself?

A. Yes. We all had a third interest in it.

Q. And at the time of that conveyance this partnership existed, did it? A. Yes.

Q. And you have seen the exhibit in this case which shows a conveyance of the interest in this hotel property to a partnership made up of yourself, your daughter and your son?

Mr. Cooke: If you ask any questions about what the document shows, I think it should be submitted to the witness. It speaks for itself, what it consists of. Object to the question, not proper cross-examination.

The Court: Objection overruled.

Q. Did you at any time, Mrs. Mapes, convey to your daughter personally any part or portion of the property upon which this hotel is being built?

A. Yes.

Q. When?

A. Around November 5th or 6th.

Q. Well, I am afraid I will have to ask you to please bring in the deed of conveyance to your daughter personally, if there [890] is one.

A. Oh, personally, no. I have been telling here——possibly I am rattled—that I deeded this to my

(Testimony of Mrs. Chas. W. Mapes.)

daughter Gloria one-third, my son Charles one-third and to myself one-third. Now I am sorry I have not answered the thought correctly. Anything else personally I didn't deed. It is all in the one deed.

Q. Now on November 5th, or up to November 5, 1945, you and Mr. Denson and your son were getting along all right, weren't you? A. Yes.

Q. And that was a month after you had signed the contract of October 5, 1945? A. Yes.

Q. I am reminded that the date of this conveyance was November 6th instead of November 5th.

A. That is right. I didn't think we were just hanging people for a day or a week or a month.

Q. Well, you didn't tell Mr. Denson anything about this conveyance to the three of you, did you?

A. No.

Q. And so far as you know he had no knowledge of it until after this action was brought?

Mr. Cooke: Objected to as irrelevant and immaterial.

The Court: Objection overruled.

A. Well, really I don't know whether I had discussed it with him or did tell him or anything. It doesn't stand out in my mind at all. [891]

Q. Well, Mrs. Mapes, you just testified that you never told him or didn't tell him. Now did you or didn't you?

A. No, I don't recall telling him, no.

Q. You had no intention at that time, did you, of defeating Mr. Denson out of any rights that he

(Testimony of Mrs. Chas. W. Mapes.)

might have had in that agreement by making a conveyance of this property to the three of you?

A. No.

Q. It has been suggested, Mrs. Mapes, that you testified that the estimate of the sum of 800 thousand dollars as the cost of the building, as set out in the agreement, was only a rough estimate?

A. It was a rough estimate.

Q. At that time nobody knew exactly how much the building was going to cost? A. No.

Q. And the 800 thousand dollars was sort of an approximation of what it might cost?

A. Yes, a low approximation.

Q. And is that likewise true of the 150 thousand dollars set out in the contract for the furnishings?

A. I don't know anything about that furnishing business, that is, if that is supposed to be low, or approximate or what. It was Mr. Denson's idea.

Q. But at any rate that was only set out in the rough like the other part of the agreement? [892]

A. Mr. Denson's agreement, that was preliminary, yes.

Q. In any event, as stated in the agreement, it was a mere estimate? A. Yes.

Q. And you understood when you signed the agreement that the second parties, meaning Mr. Denson and your son, "will at their own costs provide and place in said structure such furniture, fixtures and equipment as shall be suitable and

(Testimony of Mrs. Chas. W. Mapes.)

proper and necessary to furnish and equip the same as a first-class hotel and apartment building''?

A. Yes.

Q. You understood fully that that was the obligation of both Mr. Denson and your son?

A. Yes.

Mr. Platt: I believe that is all.

Redirect Examination

By Mr. Cooke:

Q. In regard to the deed of November 6, 1945, which counsel asked you about, how long a time prior to November 6, 1945, did you have in contemplation the making of such a deed?

A. I would say for several years before.

Q. You understood that by that deed the property is transferred from you as an individual to yourself and Gloria and Charles W. Mapes, Jr., in joint tenancy?

A. Yes.

Q. You didn't give your attorney any instructions in regard to [893] having that deed prepared prior to the time it was prepared?

A. Oh yes, I spoke about it a long time before that to you, Mr. Cooke.

Q. You say a long time, does that go back a matter of months or weeks or what?

A. A year possibly, or better.

Q. With reference to your brother, Mr. Hart, you told us about the various trips he made out here and the time he spent here. Did he have any busi-

(Testimony of Mrs. Chas. W. Mapes.)

ness here—I am now speaking about business—other than to assist you in regard to the hotel?

A. No.

Q. He came here for social purposes too, I suppose, to a certain extent, is that right?

A. Yes, of course.

Q. You had a lot of business?

A. He came out to help us on his visit. We still need his help and we have to go on and have it more.

Q. You said something this morning he is on his way here now, is that right?

A. No, right after the holidays. He would have been here sooner if we wanted him.

Q. You told counsel something about you had not discussed the Denson matter with your brother. Does that mean that you never discussed it with him or it wasn't discussed until after April 10th?

A. I don't recall ever discussing it with him; in fact, I was rather surprised and shocked when I found him in our living room when I came in that morning.

Q. Who in the living room?

A. My brother in the living room with Mr. Denson and Charles. He didn't know anything about it, so far as I knew, and I was rather surprised to see him there.

Q. You answered one of counsel's questions in regard to Mr. Denson, what took place on April 10th, by saying in part, "I now see that my son was right." What do you mean by that?

(Testimony of Mrs. Chas. W. Mapes.)

A. When Charles told me how Mr. Denson had treated him when he asked to get together on this agreement to draw up this lease, I couldn't believe my son. I don't mean to say that I mistrusted him, but I said, "Charles, please don't get excited. Let's get together and discuss this," and he said, "Mother, he treated me like a regular child. I am not supposed to have anything to do with this hotel. He is to manage it and he also went out on his agreement of 30-70." Then when I met Mr. Denson for the first time in my home and he started to tell me that I had agreed to build him a hotel and that I had begged him to take my son Charles and for my sake he considered Charles, right there and then I was through. I could realize all I had heard my son say was true and that is what decided for me.

Q. That is what you mean when you said, "I saw that my son [895] was right"?

A. Yes.

Mr. Cooke: That is all.

Mr. Platt: That is all.

Mr. Cooke: Call Gloria Mapes.

GLORIA MAPES,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooke:

Q. Your name is Gloria Mapes? A. Yes.

(Testimony of Gloria Mapes.)

Q. You are the daughter of Mrs. Charles W. Mapes? A. Yes.

Q. The sister of Charles W. Mapes, Jr.?

A. Yes sir.

Q. Do you know Mr. Denson, the plaintiff in this case? A. Yes.

Q. How and where did you first meet him, come to know who he was?

A. I met him, I believe, in the late spring of 1944?

Q. That was the first time? A. Yes sir.

Q. Down at the house? A. Yes.

Q. And after that meeting do you remember when you next met him, either there or anywhere else? [896]

A. I believe it was in the early fall, the same year.

Q. The same year, 1944? A. Yes.

Q. Where was that, down at the house?

A. Yes.

Q. When after that did you next meet him or know of his being at the house?

A. At the house?

Q. Yes, when did you know of him being at your home after that?

A. I didn't see him at home until the next year.

Q. Do you know what time it was the next year?

A. I believe it was in the fall.

Q. Well, with reference to the date September 23rd or 24th, would you say whether that was about the time?

(Testimony of Gloria Mapes.)

A. It could have been, I am not sure.

Q. You have no way of fixing it?

A. It isn't definite in my mind.

Q. To refresh your recollection, do you remember when he came down and stayed some two or three days at the house?

A. I believe that was the time he stayed at the house.

Q. And what were you doing at that time, Gloria; that is, were you attending school or what was your occupation? A. I was in school at the time.

Q. And at that time did you participate in any of the discussions held between your mother and Mr. Denson and your brother [897] and Mr. Denson?

A. No.

Q. Did you overhear anything about the lease on the hotel? A. No.

Q. Coming on down to November 6, 1945, do you remember of a deed being made by your mother to yourself and Charles and to your mother in joint tenancy? Do you remember about that?

A. Yes.

Q. At that time did you know anything about Mr. Denson and your brother Charles having some sort of arrangement or agreement of any kind on a lease on the hotel building? A. No, I didn't.

Q. When, as nearly as you can recall, did you first learn that Mr. Denson claimed that there was an agreement for a lease or the like on the hotel building? A. In the spring of this year.

(Testimony of Gloria Mapes.)

Q. You mean the spring of 1946? A. Yes.

Q. Do you recall anything about how you heard of it that first time? What made you learn of it or who did you hear talk about it?

A. My mother, I believe.

Q. At the house? A. At the house.

Q. That was the first time you knew anything about there was [898] any such claim existing as to the hotel property, is that right? A. Yes.

Mr. Cooke: That is all.

Cross-Examination

By Mr. Platt:

Q. Gloria, I understand you met Mr. Denson the first time in the late spring of 1944?

A. Yes.

Q. And then you met him in the fall of the same year and then you saw him the next year in September, 1945? A. Yes.

Q. And was Mr. Denson ever a house guest at your home? A. Yes, he was.

Q. Do you remember upon how many occasions?

A. At least a couple of times.

Q. Did you occasionally sit at the table with him and the other members of your family?

A. Yes, I did.

Q. Did you know why Mr. Denson was visiting with your family? A. Not exactly.

Q. Not exactly—do you know generally why he was visiting with the family?

(Testimony of Gloria Mapes.)

A. He was a house guest several times.

Q. Did you know why he was there?

A. No. [899]

Q. Did you ever hear that it was contemplated that he was going to run the hotel with your brother Charles?

A. No.

Q. Never heard that at all?

A. Not until I found out in the spring about it.

Q. Do you remember who introduced you to Mr. Denson?

A. Mother did.

Q. At the time of the introduction did she tell you who Mr. Denson was?

A. Not that I recall.

Q. During any of the time that you were in the presence of Mr. Denson, did you hear anything said about Mr. Denson and your brother going to manage the hotel?

A. No.

Q. You were in San Francisco, weren't you, Gloria, in August of 1945?

A. Yes.

Q. And you met Mr. Denson there, didn't you?

A. Yes sir.

Q. And your mother and Charles were there?

A. Yes sir.

Q. And do you know anything about an automobile trip around parts of San Francisco during which your mother was looking at apartment houses and hotels in San Francisco?

A. Yes. [900]

Q. Were you on the trip?

A. Yes I was.

Q. And Mr. Denson was on the trip?

A. Yes.

(Testimony of Gloria Mapes.)

Q. And Mr. Moorehead? A. Yes.

Q. Do you remember whether you saw Mr. Denson at any other time in San Francisco?

A. No, that was the only occasion.

Q. Gloria, I want to call your attention to these two newspaper articles that are in evidence here. For the purpose of the record I call them Plaintiff's Exhibit "I." I hand you a copy of the Nevada State Journal of December 2, 1945, with the proposed cut or picture of the hotel. Did you ever see that? A. Yes.

Q. Do you remember when you saw it?

A. I couldn't say exactly. I imagine it was around this date.

Q. You think it was about the time it was published? A. I believe so.

Q. Do you remember if you read it?

A. I read part of it.

Q. And the same with the Reno Evening Gazette, bearing date December 3, 1945, with a similar cut, likewise an article. Did you ever see that before? A. Yes. [901]

Q. Do you remember about when?

A. It must have been around the date.

Q. About the time it was published?

A. Yes.

Q. Do you remember reading any of that article?

A. Yes.

Mr. Platt: I think that is all, your Honor.

Mr. Cook: Call Mr. Denson as an adverse witness.

P. G. DENSON,

having been previously sworn, testified as an adverse witness called by the defendants, as follows:

Examination

By Mr. Cooke:

Q. I show you what purports to be an affidavit signed by you, Mr. Denson, dated July 19, 1946. Will you read that over and state if that is your affidavit signed by you?

A. That is my signature, yes.

Q. On page 5 of the affidavit, beginning with line 23, is this statement: This affiant became well acquainted with Gloria Mapes and affiant states the fact to be that said Gloria Mapes was thoroughly familiar with the fact that he was to manage and conduct said hotel along with her brother." Do you remember that statement?

A. I do.

Q. Is that true? [902]

A. That is true.

Q. Who was to manage it, you or you and Mr. Mapes together?

A. Let me bring that out a little more clearly.

Q. Answer the question if you will.

A. I was really to be the manager of it, but not from any publicity standpoint.

Q. That was agreed between you and Charles Mapes, was it?

A. It was just mutually agreed upon. There was nothing in the contract about it.

Q. That is agreement you had with him?

(Testimony of P. G. Denson.)

A. It was understood between him and I. In fact, he expected that.

Q. Where was the agreement discussed that way?

A. It was first discussed on the mezzanine floor in August of 1945 at the Sir Francis Drake Hotel.

Q. Who were present at that time?

A. Just Charles and myself.

Q. What was said upon that particular subject as to the management subject?

A. When Charles and I came down Charles wanted to chat with me in regard to our agreement between he and I so far as the deal was concerned. He said, "Mr. Denson," he said, "now we have never really spoken about how our agreement between you and I is to be, but," he said, "I want to be a 50-50 on this deal." And I told Charles, "That is all right, but there is [903] a little request that I would like to make of you Charles. Due to the fact that I have had many years of hotel experience, I would like to have the manager of operations." I said, "Not from a publicity standpoint and it doesn't need to be on our letterheads or our stationery." And Charles gave me the answer, "Well, Mr. Denson, I expected that."

Q. That was in regard to your statement that you were to be manager?

A. Yes, that was in reply to my request.

Q. What, if anything was said at that time as to what Charles would do?

(Testimony of P. G. Denson.)

A. Charles would take a part in the hotel, Mr. Cooke.

Q. What was said, Mr. Denson?

A. Well, I don't believe there was anything particularly said; so I think it was discussed between Charles and I that I didn't think it would take him very long to know and learn the hotel business and that I would coach him and assist him in every way that I could.

Q. While you were acting as manager—what I am trying to find out from you—what was Charles to do?

A. There would be plenty for him to do in a hotel, Mr. Cooke. He would be right along there the same as myself, so far as that goes, with the exception of making decisions in regard to personnel and actually deciding on who should be hired and discharged when anything like that came up. [904]

Q. If you were manager, he would be under you, would he not?

A. I wouldn't say Charles would be under me. I would never expect that of him at all and he wouldn't be treated as such. He would be treated just the same.

Q. What do the duties of a manager of a hotel consist of? A. It all depends what capacity.

Q. I mean such as the hotel we have in mind here?

A. I say this would be a first-class hotel, to be run on as high a plane as any hotel in the United

(Testimony of P. G. Denson.)

States. As a rule more or less there is managing director and resident manager, then first assistant and second assistant. Those are the titles they use.

Q. That is the set-up, but what I am trying to find out is the man who is supposed to be manager of that hotel and entrusted with the operation of it, what are his duties?

A. He is known as the managing director. In other words, he really has the final say in any discussion that comes up. He gets together with his resident manager and would probably call in their first assistant and go over those different things.

Q. Here you didn't have any of these other officers, just you and Charles?

A. Just Charles and I.

Q. You would be manager?

A. That is correct. [905]

Q. What would be your duties, so far as you can tell us, in the operation?

A. The operation of the hotel, would be manager of everything, every department, the various departments of the hotel; in fact, the entire crew, you might say, there would be under my jurisdiction and also Charles' too.

Q. Even though you were the manager?

A. That I believe I brought out pretty clear, Mr. Cooke, that I should have the right to decide certain things, as far as being the manager of operations. There must be one head, as a rule. Of course, there are others. I have had partners. I never had any trouble with them.

(Testimony of P. G. Denson.)

Q. What, for instance, would the things be, type of things would there be that would have to be passed upon by you as the manager?

A. Well, there might be certain employees there that were very efficient and very reliable. Your associate has equal rights with you so far as ownership of it is concerned. He might take a dislike to that particular party and say, "Well, you are fired." Well, I would like to have a little something to say in regard to that, also I would like to pass on it. There was no object in my being the manager of operations from any publicity standpoint at all. I don't intend it that way. Charles made the statement I wanted it on the stationery, which is one thing I told him it didn't have to be on the stationery, [906] just leave it out.

Q. You expected, in the event this deal went through as contemplated, that your entire time and efforts would be devoted to the job of running this hotel?

A. I intended to put all my time in it. That is why I disposed of my hotel. In operating a hotel, your Honor, all 24 hours you are on the job, whenever you are needed, but I always live on the hotel I operate.

Q. How old a man are you, Mr. Denson?

A. Is that necessary? Am I compelled to answer that?

Q. I would like to have an answer to that.

A. I don't think that has anything to do with this. I haven't asked you your age. I don't think

(Testimony of P. G. Denson.)

it has anything to do with this at all, Mr. Cooke.
I have always kept my age to myself.

Mr. Platt: I think it is immaterial.

The Court: What is the materiality?

Mr. Cooke: In connection with the testimony of Charles Mapes, he said he was an older man than he.

A. I am old enough to be his father.

Mr. Platt: I admit that.

The Court: As far as that is concerned, Mr. Platt admits he is considerably older than Mr. Mapes.

Mr. Cooke: That doesn't satisfy the law.

The Court: Well, answer the question.

A. I was born in 1883. [907]

Q. All right, figure it out. A. 63.

Mr. Cooke: That is all.

Mr. Platt: No questions, your Honor.

CHARLES W. MAPES, JR.,

one of the defendants, having been previously sworn, testified as follows:

Direct Examination

By Mr. Cooke:

Q. Were you in San Francisco on any occasion when your uncle, Mr. Hart, met Mr. Denson there?

A. Yes.

Q. What occasion was that, what date?

A. Around April 1st.

Q. 1946? A. 1946.

(Testimony of Charles W. Mapes, Jr.)

Q. That was at the time Miss Mason was up there with some plans, etc.?

A. That was the trip, yes.

Q. You have heard your mother's testimony in regard to the capacity of the garage and I think you gave some testimony when you were on the stand before. Do you remember that?

A. It was contemplated its capacity would be around 70 cars.

Q. It was contemplated, but is the building far enough progressed now so you can state what it will actually be?

A. 70 cars, is as near as I can give.

Q. What would you say from all you know about the prospects [908] of the hotel and its future whether that will be big enough to accommodate the guests?

A. It is too small. It couldn't accommodate all our guests.

Q. Has it been the contemplation to put in oil service and other equipment for handling of cars in the basement?

A. If it were necessary.

Q. Well, do you know whether it is necessary or not?

A. Well, I would think it would be necessary, yes.

Q. Have you given the subject any thought as to the amount that would be required for payment of taxes on the building and for its upkeep, fire insurance and the like of that?

A. I have given it some thought, yes.

(Testimony of Charles W. Mapes, Jr.)

Q. Have you ascertained from any investigation you have made on the subject as to what amount of taxes would be, approximately what they would be per year? A. Yes, I have.

Q. What is the amount?

A. I have to have a piece of paper. I would say roughly around 30 or 35 thousand dollars.

Q. Per annum?

A. That is rough, of course.

Q. I understand, that is your estimate, the best you can make? A. Yes.

Q. Thirty to thirty-five thousand per year?

A. Yes sir. [909]

Q. Let me ask you this. You are the manager of the Mapes Company and Mapes interests for the construction of the hotel, are you not?

A. I am the contractor and manager of the Mapes Hotel Construction Company.

Q. And you have been since the hotel started?

A. Since the permit for the building was taken out in January, yes.

Q. Have you familiarized yourself with the cost and details of the building, the upkeep, fire insurance, and subjects of that sort?

A. Yes, I have.

Q. What have you allocated, if any sum, for the cost of fire insurance on the building per year?

A. About six or seven thousand dollars a year roughly. All those figures are rough.

Q. I understand this is an estimate. Six or seven thousand per year? A. Yes.

(Testimony of Charles W. Mapes, Jr.)

Q. That is for fire insurance. And have you considered the matter of cost of upkeep of the property and the building?

A. I would say around 15 thousand dollars.

Q. These are all figures based upon the year, are they not?

A. That is per year, yes. That is a rough figure.

Q. Your mother gave some totals in her testimony this morning [910] as to the amount of money that was borrowed to build the hotel and the amount of money that the Mapes family have contributed in addition and her estimate as to the value of the lot. Did you hear her testimony?

A. Yes, I did.

Q. Without repeating and going all over again, what would you say as to whether these figures on that were correct or not?

A. As near as I can say they were correct.

Q. As estimates to some extent?

A. As to estimates. Some are exact.

Q. The amount of money borrowed, that is an exact figure? A. Yes, sir.

Q. The value of the lot is a matter of opinion or belief? A. That is reasonable.

Q. Three hundred thousand?

A. That is reasonable, yes.

Q. Did you hear your mother's testimony she had been offered more than that? A. Yes.

Q. Do you know anything about whether that is so or not? A. Yes.

(Testimony of Charles W. Mapes, Jr.)

Q. That is a fact? A. Yes.

Q. That was before the building was commenced to be constructed on it, is that right? [911]

A. Quite a few years prior to that, yes.

Q. Since April 10, 1946, what, if anything, has been done by you by way of arranging for furnishings and equipment for the hotel?

A. I have not done anything prior to that date. Was it after——

Q. Yes, I asked you after that date what, if anything, has been done?

A. I have contacted the various furnishings firms and negotiated to get furniture for the hotel.

Q. Have any shipments been made pursuant to your efforts?

A. No shipments have been made as yet.

Q. Commitments have been made?

A. Yes.

Q. Your mother gave in an estimate this morning, I think, as to the cost of equipping the hotel with necessary furniture and furnishings suitable for that type of building. Did you hear that testimony? A. Yes.

Q. I think it was 450 thousand.

A. As I recall, I believe mother said around 400 thousand or more.

Q. How does that correspond with your idea about it?

A. I would say 400 thousand or thereabouts, possibly a little more.

(Testimony of Charles W. Mapes, Jr.)

Q. In regard to these plans, lay-outs and sketches, etc., [912] that Mr. Denson has told us about, did you see any of them outside of those that were submitted by Miss Mason on behalf of Barker Bros.?

A. No, only the one of Barker Bros.

Q. That is the only one? A. That is all.

Q. Did Mr. Denson ever discuss any of these others with you, state he would get them or that he had gotten them or the like?

A. No, other than Barker Bros. I didn't know what Mr. Denson was *going* with any of the furnishings.

Q. How did you learn about Barker Bros? Did he tell you or did you know it by Miss Mason coming up to the meeting?

A. He called me four or five days prior to the meeting and wanted me to come to Los Angeles to meet with the interior decorator of Barker Bros. I told him I couldn't go to Los Angeles and I called him once or twice after that and told him I would have to meet him in San Francisco. I met the decorator from Barker Bros. around April 1st.

Q. You learned of Barker Bros. etc. from Mr. Denson before you went to San Francisco, that is right?

A. He mentioned Barker Bros. before. That was only four or five days before the meeting on April 1st. That was my first knowledge of that.

Q. And when he mentioned it to you in that way, that was the first knowledge you had? [913]

(Testimony of Charles W. Mapes, Jr.)

A. The first that I recall, yes.

Q. The first knowledge of Barker Bros. furnishing the plans?

A. That is my recollection, yes.

Q. With reference to the talk on April 1, 1946, with Mr. Denson about the sky room, did you hear his testimony?

A. Yes, I did.

Q. Have you anything to say by way of explanation?

A. Is this the meeting Mr. Denson and I had alone in the room at the Sir Francis Drake?

Q. When you discussed the sky room. I think he testified to the effect that that was the only point that was discussed, the only point of difference was the sky room.

A. I don't recall any.

Q. Well, did you discuss the sky room at this April 1, 1946 meeting with Mr. Denson?

A. Yes.

Q. Where?

A. At this room at the Sir Francis Drake.

Q. What was said in regard to it?

A. I told Mr. Denson I was very disappointed with the ideas he had given Barker Bros. on the sky room. He had shown on his plans a laundry where it spoiled our view along the river and also he put in the sky room a band stand which practically broke up the entire view of one side of the sky room, and I told him I thought it was very foolish that he would spend [914] any time and waste my

(Testimony of Charles W. Mapes, Jr.)

time on such plans, in view of the fact that my mother had increased the sky room and gone to considerable expense to make the room and view as beautiful as possible, that he had included the laundry along the river, where we have one of the finest views, the most expensive parts of the building. He didn't like it at all and I didn't like it.

Q. You say he didn't like it, what do you mean?

A. He mentioned something about he didn't want any damn kid to tell him anything about the hotel.

Q. Did he use those words, "damn kid"?

A. Well, he may not have used that, but the substance is that. He didn't want any kid telling him about the hotel.

Q. Referring to you?

A. Referring to me.

Q. This plan that you had which you discussed with him in regard to the sky room, etc., that you just testified to, was or was that not finally adopted?

A. What plan, Barker Bros.?

Q. Oh no, the plan you had for the sky room that you were discussing with him?

A. I wasn't discussing any plan with him. The only plans I discussed with him were the plans he submitted from Barker Bros.

Q. What I mean is your objections to the plans, were they afterwards incorporated in the building? Was the building according to your objections or not?

(Testimony of Charles W. Mapes, Jr.)

A. Well, none of the ideas incorporated in Barker Bros. plans were ever adopted in the building. There were so many objections to them—Mr. Slocum, Mr. Moorehead and myself; in fact, everybody who had any connection with the building objected to practically all the plans that Barker Bros. incorporated.

Q. Was the sky room finally finished, as far as it is finished, in the way that you argued with Mr. Denson that it should be? Can you tell us?

A. Yes, we have taken advantage of every view for the sky room. That is the idea of the sky room, to get a view, not to have a laundry to block out the view; and have the grand stand to block out the total side, we certainly don't have that in our present plans.

Q. That is the way you discussed it with him?

A. That is right.

Q. When he said that he didn't want any damn kid, or any kid, telling him how to run a hotel—

Mr. Platt (Interrupting): Just a minute. First the witness testified he said "damn kid" and then he says he doesn't know whether he said "damn" or not. I think before counsel attempts to put any words in the witness' mouth he had better have that cleared up.

The Court: I think the witness cleared it up. He didn't say "damn kid", he said something to the same effect, but he didn't use the word "damn."

A. I wouldn't say definitely he used that.

(Testimony of Charles W. Mapes, Jr.)

Q. Whatever it was, he made that statement, what did you say?

A. I told him that I didn't like the idea he had incorporated in the sky room, that I thought he was taking it very lightly; we had gone to considerable expense to raise the ceiling on the sky room and bring the sky room out flush with our typical room. That I didn't like the ideas and I thought the whole idea of Miss Mason up here was a waste of time.

Q. What did he say to that, if anything?

A. I don't recall. He resented me saying it, saying he wasn't going to have any kid tell him how to run a hotel. I don't know what he said other than that, I can't recall now.

Q. How old are you, Charles?

A. Twenty-six.

Q. Have you had any connection, any experience in this class of work outside of this particular hotel?

A. I have not had any hotel experience, no.

Q. I mean in constructing buildings?

A. Yes, I have dealt with the family on property we own in Reno.

Q. The family owns considerable property in Reno, does it not?

A. Yes.

Q. And it has been part of your duty and job to look after that? [917]

A. Yes.

Q. Is there any construction in connection with that?

A. There has been on several occasions, yes.

(Testimony of Charles W. Mapes, Jr.)

Q. Did you have anything to do with the job, with the work, construction, I mean?

A. Yes, I did, along with my mother.

Q. When did you first begin taking active practical interest in the construction of this hotel?

A. From the very start.

Q. Well, what I am trying to get at is was the matter discussed in your family for any considerable length of time before actual work began?

A. Do you mean actual work in the construction of the building?

Q. No, I am asking whether you discussed the matter of this hotel, how many stories it was to be and what type of construction it was to be, etc., prior to its construction? When did that first come up? Do you understand what I mean?

A. It came up some time in the fall of 1945 before we ever had any agreement with Mr. Denson.

Q. When was it talked of that your family would build this hotel first, as far as you know?

A. It has been talked about, building a hotel, ever since my father bought the property.

Q. And that goes back a matter of ten years or more? [918]

A. 1937.

Q. What I am trying to find out is, Mr. Mapes, the general subject matter of this hotel was discussed pro and con in the family there. In connection with that, did you learn anything about building of hotels and general subject matter of hotel operations?

(Testimony of Charles W. Mapes, Jr.)

A. It wasn't entirely foreign to me in that the subject had been discussed several times at the house and we have friends in the hotel business and occasionally they gave us help and information, so I wouldn't say I am a stranger to it. I was gradually working into it. A lot of that information I have used since.

The Court: We might take our recess at this time before we go to a new subject.

(Short recess.)

Mr. Mapes resumes the witness stand on further examination by Mr. Cooke.

Q. Since you assumed the management of construction, state what the fact is as to whether you have given your entire time as to that work and business?

A. Yes, practically my entire time.

Q. Have you any other business or occupation?

A. Other than family business, no, the hotel has occupied all of my time.

Q. Where did you go to school, Mr. Mapes?

A. University of Nevada and Harvard Business School.

Q. Did you graduate from the University of Nevada? A. Yes, I did.

Q. What did you major in?

A. Economics and business administration.

Q. Did that include the subject of accountancy?

A. Yes.

(Testimony of Charles W. Mapes, Jr.)

Q. And you attended Harvard University too?

A. Harvard Business School.

Q. That is a preparatory school for draftees, or at least persons who were going into the navy?

A. The Harvard Business School course was given to all officers going into the Supply Corps of the United States navy, accountancy, purchasing supplies and business matters.

Q. How long did you attend that?

A. It is a year and a half course and I went five months.

Q. Did you get any certificate at the completion of your course there from that institution?

A. Yes, I did.

Q. And you did complete the course?

A. I completed it.

Q. You told us you were in the navy. What particular type of work did you do in the navy?

A. I was a supply officer. I had charge of pay-rolls, paying the personnel on the base of the squadron. The particular [920] unit I was attached to did the purchasing of supplies.

Q. Did that involve substantial sums of money and property under your charge?

A. Very substantial. I would say it ran into millions of dollars.

Q. What part of the territory did you cover?

A. All of the Pacific Coast, all of Alaska, all of the Aleutians, part of the Islands in the Pacific.

Q. What particular title, if any, did you have?

A. Supply officer, Navy Air Transport Service.

(Testimony of Charles W. Mapes, Jr.)

I was attached to various supply services. Most of my naval service was with the transport service.

Q. Did the course you told us you received and the experience you had with the navy assist you to any extent in your work in connection with the construction and furnishing, etc. of the Mapes Hotel?

A. It gave me a very fair understanding of how to handle books and to purchase material.

Q. As supply officer of the navy, was that part of your job there, to purchase material?

A. Absolutely. That was my whole job, to pay the men and to purchase all supplies needed.

Q. And that ran into the millions, I think you told us?

A. Yes, that included aircraft and food, clothing, practically everything; furniture, just about everything you can [921] name.

Mr. Cooke: I think that is all.

Cross-Examination

By Mr. Platt:

Q. Mr. Mapes, during all of the negotiations, beginning in 1944 and continuing up to the execution of the contract in evidence here, Mr. Denson was available to you at almost any time?

A. No, there was a long period of time when I didn't know Mr. Denson's address. After he sold his hotel in Visalia, Mr. Denson went on what you might call a vacation and rest; for a long period of time there I didn't know where he was staying.

Q. Well, after the execution of this contract on October 4, 1945, you knew that Mr. Denson was a

(Testimony of Charles W. Mapes, Jr.)

resident of California and spent most of his time in California?

A. Yes, I knew he was a resident of California.

Q. And during all that time you were in California and in San Francisco and Oakland and never left the country during the war, did you?

A. I did. I had out of States service, yes, in the navy.

Q. How long a period of time?

A. For over a year.

Q. Where did you go?

A. The Aleutians.

Q. And when did you return from the Aleutians?

A. This was all prior, before I think I even met Mr. Denson. I don't think this is all necessary. What is it going to show?

Q. Well, when did you first meet Mr. Denson?

A. I think it was some time in September, the early fall of 1944.

Q. Well, since early September, 1944, you were constantly in the State of California, weren't you?

A. I wasn't constantly, no. I made trips to Reno and made trips to Seattle. My job was in a squadron that operated all over the Pacific, Mr. Platt, and we had no permanent base. Our job was to carry supplies and mail.

Q. Where were your headquarters?

A. I was based at the Oakland Airport, Oakland, California.

Q. Your headquarters were Oakland, California?

(Testimony of Charles W. Mapes, Jr.)

A. Yes. I got out of the navy shortly after that.

Q. You knew all the time, didn't you, that Mr. Denson was a resident of the State of California?

A. I knew he lived in California, yes.

Q. And that he actually lived there?

A. Yes.

Q. And during some of the period that you were in the service you made week-end trips to Reno, didn't you? A. Yes.

Q. And those week-end trips occurred in 1945, didn't they? [923] A. Yes.

Q. And prior to and up to and later than October 4, 1945 when this contract was executed?

A. I made trips to Reno after that, yes.

Q. Well, you almost made weekly trips, didn't you?

A. No, I made two trips. I made one trip around September 22nd and 23rd, was on a 71-hour pass, and another one on October 4th. Shortly after I was on terminal leave, getting out of the navy.

Q. And then you were in Reno most of the time?

A. Yes.

Q. And as I understand it, up to April 1, 1946, you and Mr. Denson got along all right?

A. We didn't have any hard feelings, no. We were still trying to get together.

Q. You have just testified here, Mr. Mapes, about estimates that you have made of taxes, insurance and upkeep. Have you made any investigation as to the amount of interest that would be due on the borrowed money? A. Yes.

(Testimony of Charles W. Mapes, Jr.)

Q. What do you estimate that to be?

A. That would be around 48 thousand dollars.

Q. A year?

A. Yes. You are talking about the building as it is now?

Q. Yes, I am talking about the loan that was made for the [924] construction of the building. And who had that loan?

A. Is that absolutely necessary?

Mr. Platt: Well, I submit, your Honor, that Mr. Denson is obligated to guarantee the interest on the loan and I think he is entitled to know something about the loan.

The Court: Objection overruled, if there was one. I have not heard one yet. You may answer the question.

A. It is not the company that Mr. Denson claims that we got the loan from.

Q. Will the reporter kindly read the question?
(Question read.)

A. Do I have to answer that, your Honor?

The Court: Yes.

A. Jefferson Standard Life Insurance Company.

Q. Now, Mr. Mapes, when you entered into this agreement and signed it, you were familiar with paragraph 9 of it, weren't you, which reads as follows: "The second parties (which means you and Mr. Denson) as a part of said lease will guarantee the said first party (which means your mother) that the total annual income from the entire build-

(Testimony of Charles W. Mapes, Jr.)

ing, which the first party will receive will be in an amount at least sufficient to cover payments required of the first party for taxes, upkeep, insurance, interest on borrowed money and to amortize the cost of said building within said lease period." You understand [925] that section, don't you, didn't you, of the agreement when you signed it?

A. That is part of the agreement, yes.

Q. You recognize from that section of the agreement, don't you, that no matter what the taxes are or will be, or the insurance is or will be, or the upkeep is or may be, or what the interest on borrowed money may be, that Mr. Denson is obligated, as well as you, to guarantee that payment to your mother, Mrs. Mapes?

Mr. Cooke: We object to that, asking for witness' construction of the agreement. The agreement can speak for itself.

The Court: Objection overruled. Answer the question.

A. Well, that is what it says there.

Q. That is what it says?

A. I can't interpret it. I am not a lawyer.

Q. Well, you understood it when you signed it?

A. Yes, I did, with the understanding that Mr. Denson and I would always deal right with mother. That was part of the agreement that I signed, yes.

Q. Well, let me ask you again, did you understand section 9 of this agreement when you signed the agreement? A. I believe I did.

Q. Now you have testified, Mr. Mapes, to a con-

(Testimony of Charles W. Mapes, Jr.)

versation that [926] you had with Mr. Denson at the Sir Francis Drake Hotel on April 1, 1946, in Mr. Denson's room. I asked you that same question when you were on the stand before, as to your conversation with Mr. Denson at that time. I have a transcript of your testimony before me and your answer, and why is it in your answer, in response to my question, "What was discussed there?", why was it when you were on the witness stand before you didn't testify that Mr. Denson called you a damn kid, or in substance something to that effect? I show you the question and I show you the answer.

A. What question are you referring to here? Will you point it out?

Q. I am sorry. The question beginning at line 16: "Was there anybody else there beside you and Mr. Denson?" The next question is "What was discussed?"

A. I don't know why unless you cut me off and asked me another question. That is actually what happened there.

Q. Why didn't you also testify, when I asked you this question, as a part of the discussion, that the question of the laundry room in the sky room was discussed?

A. I don't think you asked me any question to bring the answer out.

Q. I asked you what was discussed there, didn't I? A. Discussed where?

Q. At the interview that you had with Mr. Denson in Mr. [927] Denson's room at the Sir Francis Drake Hotel on April 1, 1946.

(Testimony of Charles W. Mapes, Jr.)

A. You asked me and I answered it. I may not have given you all the conversation.

Q. But you note from an examination of the answer that you gave on yesterday, I think it was, when I interrogated you, that you made——

Mr. Cooke: (Interrupting) Wasn't here yesterday.

Q. (Continuing)—that you made no reference to the laundry matter and made no reference to the fact that Mr. Denson called you a damn kid or something to that effect.

A. I think I corrected my statement. I didn't say that necessarily Mr. Denson called me a damn kid, but he implied a kid in the conversation. I thought I had corrected that previously.

Mr. Platt: May Mr. Sinai interrogate the witness in respect to these plans, your Honor?

The Court: Yes.

Examination

By Mr. Sinai:

Q. Mr. Mapes, you have testified that Mr. Denson showed you the drawings from Barker Bros. and that there was indicated thereon a laundry in the sky room, that is your testimony, is it not?

A. Well, that is the substance of it. He wanted the laundry up there.

Q. Well, wasn't your testimony to the effect that he showed [928] you plans of Barker Bros. and that the plan indicated a laundry and that you objected to that because it shut off the view?

(Testimony of Charles W. Mapes, Jr.)

A. He had a laundry in the sky room. If he did not have it, he was going to put one there.

Q. And when you testified as to the laundry, did you have the plans before you at the time you and Mr. Denson discussed the sky room and the furnishing of it? A. I haven't seen those plans.

Q. I show you here a plan and the notation thereon is: "Sky room, Hotel for Charles W. Mapes Company, as suggested Barker Bros." That is Plaintiff's Exhibit No. G-1. I ask you if there is indicated thereon anything by way of a laundry?

A. That is not a complete plan of the sky room. The sky room is extended on here and it was this space, if I recall, Mr. Denson wanted to put the laundry. This is the river, this is Virginia Street, this is along the river, this back portion that was added on.

Q. Then I understand the plan of Barker Bros. doesn't show the laundry?

A. Well now I think there is another plan.

Q. I show you here another plan, which is also part of Plaintiff's Exhibit G-1, also prepared by Barker Bros., and ask you if that is the plan which has notation: "Proposed lay-out, top floor, dining room C. W. Mapes Hotel, Reno, Nevada", [929] and ask you if this plan was also shown to you by Mr. Denson?

A. I assume it was, but there is still another plan of the sky room. You haven't shown me the right one yet.

(Testimony of Charles W. Mapes, Jr.)

Q. Is there anything on either of these plans of the sky room or top floor of Barker Bros. which indicates the laundry?

A. There is nothing. This is only a portion. This isn't the whole sky room. It doesn't even show the steps.

Q. Isn't it a fact that subsequently the sky room was extended, which will not show on Barker Bros. plan, on either of these plans?

A. If I recall—if you show me the right plan of Barker Bros. I can show you what I mean. There is some other plan. I believe it was colored. These were not the only other plans.

Q. Are there other plans of Barker Bros.?

Mr. Denson: Yes, there are quite a number of them but there is no place on any other where such a thing as a laundry proposed in the sky room.

Mr. Cooke: I move to strike that out.

The Court: It may go out.

Q. Mr. Mapes, I show you another plan of the sky room from Barker Bros. and which is also part of Plaintiff's Exhibit G-1, and ask you if there is anything on this third plan which indicates a laundry?

A. This is only a part plan. There is no laundry on there. [930] This is the plan I had reference to. This is along the river. This is Virginia Street. It is this section back here on this plan that showed a bakery, kitchen storage, linen storage, men and women's rest rooms, which takes up half

(Testimony of Charles W. Mapes, Jr.)

the area of the sky room along the river side, takes up the whole back portion. The recommendation was made at the meeting that a laundry be put up there. However, I recall now that I objected to this plan because, as you can see yourself, Mr. Sinai, this is the river, half of our view along the river is taken up by rest rooms, by bakery, by linen storage, by kitchen storage. The ceiling is 16 feet high, we have double pane glass and the view is entirely lost. It is an absolute waste, as far as getting anything out of it for any beauty standard and was the contention of Mr. Moorehead and Mr. Slocum and all my engineers that all this kitchen storage and bakery equipment should be down in the basement, which is customary, I think, in almost any hotel, rather than have it put on top of the hotel.

Q. Wasn't it also Mr. Denson's objection—didn't Mr. Denson advise you that this was Barker Bros. idea and that he did not propose to have this, the kitchen storage or bakery or anything else and in fact recommended it be a clear opening for the view?

A. He did not. As I understand it, this was his suggestion to Barker Bros. Mr. Denson testified he worked with Barker [931] Bros. and I assumed at that time it was his idea that he gave to Barker Bros.

Q. A plan subsequently was adopted, was it not, in respect to the sky room? A. A plan?

Q. Yes.

(Testimony of Charles W. Mapes, Jr.)

A. We have a plan now, yes.

Q. When did you have your ideas finally crystallized into a plan for the sky room, what date?

A. Well now, when you ask me about a plan, there are several plans of building—there is material plan, there is structure plan. At that time we had structure plan of the sky room. I mean we knew where the columns were, how high the ceiling was going to be; in other words, knew how much space we had to work in.

Q. When did you finally determine on the layout of the sky room of a definite nature so that you would have this view you are talking about?

A. I can't give you any definite date except I know the sky room is fixed—on April 1st—I know we haven't done any changes on the structure part of the sky room since.

Q. How long prior to that did you determine that you wanted a clear span and not have any storage rooms or laundry, as you say, or anything else?

A. That was our intention right from the start, Mr. Sinai. [932]

Q. You told Mr. Denson that?

A. I told him that, yes.

Q. When did you tell him that?

A. I told him that in his room at the Sir Francis Drake. I didn't want to embarrass him in the presence of Miss Mason and everybody because my engineers were very mad about that, that he would destroy the most beautiful part of our room with bakery, laundry and kitchen.

(Testimony of Charles W. Mapes, Jr.)

Q. So far as Mr. Denson was concerned, that was satisfactory, was it not?

Mr. Cooke: What was satisfactory?

Q. To make the changes Mr. Mapes is referring to.

A. I don't know whether it was satisfactory or not. I didn't pay much attention because as I said, I was pretty disappointed that he would recommend such a lay-out.

Q. And from that time on he raised no objections to the changes that you suggested on April 1st?

A. We didn't have any more suggestions, Mr. Denson and I. It was left rather unhappily. I asked Mr. Denson to come to Reno and in about ten days' time he did come up and then after that I had no dealings with Mr. Denson on the hotel.

Q. In respect to the Jefferson Standard Life Insurance Company loan, have you committed yourself for any loans to any other company in addition to the Jefferson Standard Life Insurance Company? [933]

Mr. Cooke: Objected to as irrelevant and immaterial.

Mr. Sinai: We submit it is proper for the same reason given by Mr. Platt.

The Court: Objection will be overruled. I was just wondering if you should continue or not the examination on that point.

Mr. Sinai: Possibly I should not, your Honor.

The Court: Maybe one of you—

(Testimony of Charles W. Mapes, Jr.)

Mr. Sinai: I would prefer to have Mr. Platt interrogate.

(Examination continued by Mr. Platt.)

Q. Before I go on to another subject, Mr. Mapes, I will ask you if in addition to the life insurance company loan about which you have been interrogated and about which you testified, there was any other loan upon the building which involves, according to the agreement, the payment of interest thereon by you and Mr. Denson?

Mr. Cooke: Same objection.

The Court: Objection overruled. You may answer the question.

A. There is no other loan.

Q. Mr. Mapes, have you ever taken a course in engineering? A. No sir.

Q. Have you ever taken a course in architecture?

A. No sir. [934]

Q. Have you ever taken a course in building construction?

A. I have had manual training, things of that nature, which were required in school.

Q. Have you ever taken a technical course at any school or university or institution of learning?

A. No.

Q. Involving architecture, building construction, engineering, or kindred studies relating to the construction of buildings?

A. No technical studies, no.

Q. Have you ever taken a course in drafting?

(Testimony of Charles W. Mapes, Jr.)

A. I have had mechanical engineering, which is based on drafting.

Q. Have you ever actively participated in the management of a hotel so called?

A. I think I testified previously I have taken an active part in the Mapes Building.

Q. And you also testified that the Mapes building was——

A. (Interrupting) 100 rooms.

Q. 100 rooms, and let me ask you with respect to that, those rooms were practically filled, and always have been, with permanent guests, have they not?

A. Not necessarily, no sir. We have transient guests there.

Q. Is there any food supplied to those people?

A. There is no food, no.

Q. Any elevator Service? [935]

A. No elevator service.

Q. Is it fair to call it a rooming place?

A. There are apartments and rooms there. It is not a rooming house, not, it is above that type.

Q. Well, in any event, that represents the extent of your so-called hotel experience?

A. I have contacted Forwich & Forwich, who were the hotel accountants, the peer accountants in this country. I have their books, I have their information, I have been studying them. I know their food costs, their liquor control, their room schedules, and I have received considerable information from them. They are a firm that represents

(Testimony of Charles W. Mapes, Jr.)

100 or 200 hotels, nation-wide, do all the accounting for the hotel business and actually what they did is to boil down the information that governed things to operate a hotel.

Q. But as a matter of practical experience, you have not operated any hotel, or assisted in the operation of any hotel, save and except the so-called Mapes Building hotel, which you characterize an apartment house and which I characterize as a rooming house? You have had no experience whatever outside of that? A. No.

Q. As a matter of fact, Mr. Mapes, those rooms which you describe, the 100 rooms, are immediately over the Woolworth Building, aren't they, on Virginia street? [936]

A. You know where they are, Mr. Platt.

The Court: What is the answer?

A. Yes, they are.

Q. There isn't any lobby entrance to the rooms?

A. There is an entrance on Virginia street.

Q. On Virginia street? A. Yes sir.

Q. That entrance is a stairway?

A. Yes sir.

Q. And it goes up into the rooming section?

A. Yes, the stairway goes up.

Q. Is there any office connected with it?

A. We have an office there, yes, have a manager.

Q. And you have not conducted the office personally?

A. I do not live there. We have a manager there full time, yes.

(Testimony of Charles W. Mapes, Jr.)

Q. Then the management of the rooming house or apartments, whatever it may be described as, is under somebody under your supervision?

A. It is under mother's and my supervision. They act under our orders, yes.

Q. But the active work of management is designated to somebody who represents you?

A. Well, the management only consists of somebody being there, if a person wants a room or in case there is any trouble. I [937] mean the actual business of it is from the family.

Q. And in addition to these rooms you describe, there are offices, aren't there?

A. There are offices, yes.

Mr. Platt: That is all for the present.

Mr. Cooke: Some four or five questions back counsel stated he characterized this building as a rooming house. I move to strike that.

The Court: Motion denied. Anything further of this witness?

Redirect Examination

By Mr. Cooke:

Q. Counsel asked you a number of questions as to whether Mr. Denson was available during the period from September 24, 1945, on down to say April, 1946. I would like to ask you if you were available to him at any of that time for the purpose of meeting and discussions about your proposed agreement?

A. Yes, Mr. Denson at the entire time knows my address has always been 509 Ralston street, Reno, Nevada, for 26 years, over 20 years.

(Testimony of Charles W. Mapes, Jr.)

Q. You have told us you were in the Navy and you returned here for weekends at various times during that period, is that right?

A. I think I was available from October 15th or thereabouts, from October 15, 1945, on to the present date. [938]

Q. And in regard to your mother being available to him for the purpose of having a meeting, what do you know about that?

A. Mother was here the whole time, at our home.

Q. In any of the discussions that you had with Mr. Denson about your business relations, was the matter of the store rentals discussed, the amount of the store rentals?

A. No.

Q. Was the matter of how they were to be fixed, who was to have the say-so about fixing them, discussed?

Mr. Platt: What do you mean by store rentals, Mr. Cooke? These two people are not renting the stores, they are only renting the hotel. I do not understand the question.

Mr. Cooke: The agreement provides that——

The Court: There is nothing before the Court.

Mr. Platt: Well, I ask Mr. Cooke to clarify his question. I don't understand it.

The Court: Mr. Cooke, will you clarify that question?

Mr. Cooke: Well, the purpose of the question is to ascertain whether the amount of store rentals were discussed, those rentals from the stores that are to be included in this agreement, merged in the contract.

(Testimony of Charles W. Mapes, Jr.)

Mr. Platt: Oh, if he limits it to that, I have no objection.

(Question read.)

The Court: Do you want to reframe your question? [939]

Q. I am asking if any discussion was had with Mr. Denson in regard to who should fix those store rentals?

A. No, I do not recall that anything was discussed with Mr. Denson.

Q. You do not recall any discussion between you and Mr. Denson? Did you ever hear the subject discussed between your mother and Mr. Denson as to who should fix the amount of store rentals and how to rent the stores?

A. I have not, no.

Mr. Cooke: That is all.

Mr. Platt: No further questions.

Mr. Cooke: That is defendants' case, your Honor.

The Court: Any rebuttal?

Mr. Platt: We want to put Mr. Denson on in rebuttal, but it is rather late.

The Court: We will take a recess until tomorrow morning at 10:00 o'clock. [940]

Thursday, December 19, 1946, 11:00 a.m.

Appearances as at previous sessions.

The Court: Do I understand, Mr. Cooke, the defense rested?

Mr. Cooke:

P. G. DENSON,

having been previously sworn, testified on rebuttal as follows:

Direct Examination

By Mr. Platt:

Q. Mr. Denson, you heard the testimony of Charles W. Mapes, Jr., one of the defendants, with respect to a conversation he had with you in your room at the Sir Francis Drake Hotel in San Francisco on April 1, 1946. In that conversation he stated that impliedly, at least, that you called him a damn kid. He qualified that by stating that you didn't actually call him that but addressing my question to that particular conversation, I wish you would tell the Court, as nearly as you can, the entire conversation, what you said and what Mr. Mapes said, which occurred upon that occasion.

Mr. Cooke: I submit this has been gone over on direct examination of Mr. Denson.

The Court: I think under the circumstances it may be permitted. Objection will be overruled.

A. Charles and I—I went to my room first, then Charles came down, I presume about five minutes after he had gone up to [941] assist Miss Mason with

(Testimony of P. G. Denson.)

her drawings up to her room. Charles came in and stated to me, he says, "Mr. Denson," he says, "I want to talk over some things with you." He says, "As you know, you have known for some time, that mother has gone ahead with the other two stories of the building cost of labor is high and material is high and expenses of the building are running more and," he says, "we have had big offers, Mr. Denson, for the sky room. In fact, it is just out of our reach and you and I can't begin to compete with the offer." I said to Charles that I didn't like to give up the sky room and he informed me that well, if I wanted to give it up or not, I would have to give it up. Then I informed him that our contract called for the sky room and specifically stated the sky room. Then he informed me, "Well," he said, "Mother was rushed into that contract." That remark I resented because I knew that Mrs. Mapes had not been rushed into the contract.

Q. Well just state what you said.

A. So I informed Charles to that effect. Charles got——

Q. (Interrupting) What did you say when you informed him about Mrs. Mapes not being rushed into the contract?

A. I told Charles that our contract called for it and I didn't want to give up the sky room. Charles said—got up out of his chair—he said, "Well, Mr. Denson, if that is the way you are going to take it, there is no need of discussing it with you any further." I asked Charles to sit down. I said, "No

(Testimony of P. G. Denson.)

need [942] of getting excited, Charles, over this. Sit down and let's talk this over." I told him I was very much surprised, knowing that he and I were starting out as partners into this project, that he would act that way. I tried to explain things to him and asked him if he really ever sat down to think just what Mrs. Mapes' return would be from our operation of the hotel. "Oh, yes," he says, "I have gone into that but," he said, "Mr. Denson, there is no use talking to mother. We just don't get the sky room." Well, I informed him I wouldn't give the sky room up. He went out the door and he said, "I will be back again at five o'clock to talk to you some more about it." Later on he phoned me to join him to have a drink in the Persian Room. His uncle and his girl friend were there and I had invited Charles and his uncle to be my guests at dinner, but Charles didn't want to have dinner at the Persian Room, wanted to go down to Bernsteins. In fact, his uncle wouldn't let me take care of the check. So Charles and I walked down there together and Charles talked some more to me about the sky room and going back Charles and I walked together again and he made the statement about this big offer for the sky room. He said, "Mr. Denson, this is a legitimate offer, they are friends of ours." We continued on Powell street to the corner of Sutter. He said, "Mr. Denson, we still have the rest of the hotel and the casino part down stairs too. Why can't we give up the sky room?" He said, "I have to [943] stand by mother and Gloria. I want

(Testimony of P. G. Denson.)

to go along with you." I said, "Charles, I am not asking you to turn against your mother and Gloria, but for us to give up the sky room—our contract calls for it." He says, "I am sure, Mr. Denson—he wanted me to come to Reno the next day with him and Mr. Moorehead and his uncle. I told him, "No, I am going to take the plane back to Los Angeles." Mrs. Denson was down there and I had an appointment down there to keep and I would return and be over in Reno in a week or ten days. He said, "I am sure, Mr. Denson, if you come over to Reno you and mother and I can get together and thrash this thing out and make it agreeable for all of us." I said, "Charles, I will come over, but I still do not want to give up the sky room, but one thing I want to make clear, I was very much surprised at the way you talked." I said, "You were more or less insulting" and I did remark I didn't let any one shove me around. I said, "I am surprised too that you would talk and treat me like that." He said, "I have already forgotten that." I said, "Charles, I am going to pass if off and forget it." I said, "It won't happen again." The whole thing, Mr. Platt, is just surrounded around this sky room, the offer they had; that is the whole trouble and nothing else but that.

Q. Did you at that time, Mr. Denson, or at any other time, ever call Charles Mapes a damn kid or call him anything that would savor of that statement? [944]

(Testimony of P. G. Denson.)

A. No, Mr. Platt, at no time. Charles and I were just as friendly as we could possibly be all the way through. In fact, I treated Charles as if he was my own son and I was very friendly, I felt just like one of the Mapes family. They knew my movements. They knew where I was all the time. We worked together on everything. There was never any unpleasantness between Charles and Mrs. Mapes and I, never any misunderstanding about anything at all. The only little misunderstanding was that that 23rd when the contract was signed, when I insisted on Mrs. Mapes sending for Mr. Cooke and I let Mrs. Mapes know I was not trying to do anything under cover. This whole case is just this sky room, the money they have been offered by some one, I don't know who.

Mr. Cooke: I move to strike all the answer except the first part.

Witness: This whole case Mr. Cooke, you know this yourself too; I am surprised at you.

Mr. Cooke: I move to strike that portion of the answer after "one of the family," and also move to strike the remarks addressed to myself.

The Court: Everything after "one of the Mapes family" may be stricken.

Q. Mr. Denson, as I recall it, Mr. Mapes also stated that at one of the interviews you had with him that you expressed a desire to put a laundry in the sky room. Do you recall the date [945] of the conversation given by Mr. Mapes with respect to the laundry, putting a laundry up there?

(Testimony of P. G. Denson.)

A. I don't think nothing was ever said about a laundry. I couldn't remember the date because there was never anything said about a laundry. I never heard of it before until yesterday.

Q. Well then, did such a conversation take place as Mr. Mapes stated, or didn't it?

A. No, it didn't. Nothing was ever said in regard to any laundry at all. Never had any conversation about a laundry, never heard anything about it.

Q. At no time or no place?

A. At no time.

Mr. Platt: I think that is all.

Cross-Examination

By Mr. Cooke:

Q. Calling your attention to what was presented to Charles Mapes last evening as a part of Barker Bros. plans, diagrams or sketches of the sky room, you know what I am referring to, do you not, Mr. Denson? A. Yes, I do.

Q. Do you recall that being used in the talk that was had down there April 1, 1946?

A. This same sketch, yes sir. Part has been torn off there. The other part is around here. [946]

Q. What was the part that was torn off?

A. That is part that goes out into the dining room and part of the sky room and I think extends on back to the music stand.

Q. Wasn't the matter of a laundry being located on the river side, on the southeast corner of the building in the sky room, discussed at that date?

A. No sir.

(Testimony of P. G. Denson.)

Q. Were you there throughout?

A. I was there throughout, yes sir.

Q. You say you never heard anything about the laundry in the sky room until this case came up for trial?

A. Until he mentioned it, yes, just yesterday.

Q. Did you hear Mr. Moorehead's testimony?

A. Yes, I heard every bit of it.

Q. This does represent location, or prospective location, of certain things on the sky room floor at the southeast corner of the building, to which Mr. Mapes objected, doesn't it?

A. Mr. Mapes didn't make any objections at that meeting in regard to anything up there. When we got to the sky room he said he didn't want to decide anything on the sky room until there was a few things he wanted to take up with Mr. Denson first. That was at the meeting right then and there and that led up to our conversation in the room.

Q. You mean by that to say that he made no statement at any rate of objection or otherwise, as to the rooms that he [947] pointed out yesterday in the southeast corner of the building as shown upon that sketch?

A. He made no objections to anything that we submitted about the sky room, that is by Miss Mason, the designer. Looked over all of them and there was quite a discussion with Mr. Slocum and Mr. Moorehead, Charles and myself, but there was nothing criticized, so far as any of those proposed plans.

Q. As a matter of fact, that has been changed, you know that, don't you? A. What is that?

(Testimony of P. G. Denson.)

Q. The sky room, southeast corner.

A. What has been changed—at that time, Mr. Cooke, none of this change was anticipated at that particular time. This is what we asked for, to carry that on out and a few days after I was notified by the mechanical draftsman up there and he showed me the drawings. Well, they have changed that—the plan will show—I can get the blueprint, if you would like to see what the original plan was, if you would like to see them.

Q. None of these things are on the sky room now?

A. Mr. Cooke, I can't tell you.

Q. The rest rooms, bakery, kitchen storage?

A. I couldn't tell you.

Q. You don't know?

A. I don't know. I couldn't tell you. I was refused the plans. [948]

Mr. Cooke: I move to strike that.

Mr. Platt: I think that is explaining why he didn't know what the present changed plans contain.

A. Mr. Cooke, I haven't seen any of the plans——

Mr. Cooke: Just a minute. I asked him if he knew and he said he didn't know because he was refused the plans. Why he didn't know, I submit, is a volunteer statement, not responsive.

The Court: It may go out.

Q. In regard to this offer that you say Charles mentioned to you at that time at the Sir Francis Drake, did he go into any details, tell you what it was, who made it?

(Testimony of P. G. Denson.)

A. I asked him two or three times what was this offer, but he just said it was a legitimate offer from friends of theirs, but I have heard what the offer is several times.

Q. I am asking you what he said.

A. He wouldn't tell me what the offer was.

Q. Wouldn't tell you the names?

A. Wouldn't tell me the names of the parties.

Q. All he said it was a legitimate offer?

A. That is right. In fact, he said it was enough to take care of the cost of one-third of the building. He did make that statement.

Q. Is that all he said about that?

A. That is all. We had quite a lengthy conversation on the [949] corner of Sutter and Powell after dinner.

Q. Upon the same subject?

A. Upon the same subject, about that particular thing.

Q. Did he tell you then who made the offer?

A. No, he would never tell me who made the offer.

Q. He didn't tell you?

A. No, I asked him some two or three times, but he never told me. Just said a friend of theirs.

Q. You have told us all you can recall about the offer and who made it?

A. He said the offer was large enough to take care of one-third of the building.

Q. You told us about that. A. Yes.

(Testimony of P. G. Denson.)

Q. I say you have told us now all you recall about what he said as to what that offer was and who made it?

A. That is correct. I don't know who made the offer; I didn't know and I don't know now who made the offer.

Q. Well, I am asking what he said, is all I am asking you? A. Yes, that is all.

Mr. Cook: I think that is all.

Mr. Platt: That is all.

The Court: Anything further?

Mr. Platt: We have no further rebuttal, your Honor.

The Court: Now about Mr. Moorehead's testimony. [950]

Mr. Platt: Your Honor please, upon examination of the transcript of the record, we are satisfied with that and we will not call Mr. Moorehead back.

The Court: Have you anything further you would like to offer?

Mr. Cooke: No; Mr. Moorehead was on cross-examination at the time we adjourned and I had not concluded, but I can't say to the Court there is anything in my mind of particular importance that I feel we would be especially injured by his not being questioned. In view of his physical condition, I do not like to do anything to impose any hardship on him, so we haven't anything further from Mr. Moorehead and we haven't any further testimony except it would be repetition.

Court adjourned at 11:40 a.m. [951]

State of Nevada,
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the testimony adduced and the proceedings had at the trial of the case entitled, P. G. Denson, Plaintiff, vs. Irene Gladys Mapes, et al., Defendants, No. 552, held in Reno, Nevada, on October 28, 29, and 30, 1946, and December 10, 11, 12, 13, 18 and 19, 1946, and that the foregoing pages, numbered 1 to 841, inclusive, consisting of two volumes, Volume 1 being pages numbered 1 to 408, inclusive, and Volume 2 being pages numbered 409 to 841, inclusive is a full, true and correct transcript of my said shorthand notes, to the best of my knowledge and ability.

Dated at Carson City, Nevada, July 5, 1947.

/s/ MARIE D. McINTYRE,
Official Reporter.

[Endorsed]: Filed July 8, 1947. [952]

In the District Court of the United States of
America, in and for the District of Nevada.

Case No. 552

P. G. DENSON,

Plaintiff,

vs.

IRENE GLADYS MAPES, also known as Mrs.
Charles W. Mapes, Charles W. Mapes, Jr.,
Gloria Mapes, and Chas. W. Mapes Company,
a co-partnership,

Defendants.

DECISION AND
FINDING OF FACT AND CONCLUSIONS
OF LAW

Plaintiff prays for a decree for the specific performance of the agreement which was admitted in evidence as Exhibit "C" and which is as follows:

"This agreement entered into the 24th day of September, 1945, by and between Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, of Reno, Nevada, hereinafter designated 'first party', and Charles W. Mapes, Jr., of the same place, and P. G. Denson, of Visalia, California, hereinafter designated 'second parties';

Witnesseth:

“That whereas, the first party intends to construct a new fire-proof hotel, apartment, store building and garage, the total expense of which is now estimated at \$800,000.00, or thereabouts, at the southeast corner of Virginia and First Streets in the City of Reno, Nevada, having a frontage on Virginia Street of 167.64 feet and a frontage on First Street of 139.55 feet, in accordance with plans, a copy of which are annexed hereto, and specifications which are to be prepared by The Moorehead Company of Los Angeles, California, and which plans and specifications must be approved in writing by the parties hereto before any lease on said premises shall become effective; and

“Whereas, inclusion of 12 feet of said frontage on Virginia Street, extending 139.55 feet easterly from Virginia Street is conditioned upon the first party consummating the purchase thereof from the City of Reno, negotiations therefor with the said City being now [953] in progress; and

“Whereas, it is contemplated the first party shall grant a lease to the second parties and the second parties shall receive a lease from the first party of all said structure when completed, except eight (8) store spaces on Virginia Street and three (3) store spaces on First Street, on the first floor of said structure, as shown by the preliminary plans dated August 31, 1945 made by the said Moorehead Company, a copy whereof is annexed and made a part hereof.

“Now therefore, this agreement further witnesseth:

“1. That in consideration of the premises and for other valuable and sufficient consideration present and received, the receipt whereof is hereby mutually acknowledged by the parties, that contemporaneously with the execution and delivery hereof, the second parties shall deposit with the first party the sum of \$20,000.00 in cash as a guarantee of their good faith and by way of inducement for the first party to enter into this agreement.

“2. That the first party agrees to complete said structure at said location subsequently, according to said completed and approved plans, and specifications to be prepared and approved, on or before January 1, 1947.

“3. The parties hereto shall immediately enter into a discussion with each other as to the terms, conditions and details of said lease; that the period of said lease shall be not less than twenty (20) years from the date the premises are in condition for possession thereof to be delivered. The parties hereto agree that when such terms, conditions and details have been mutually agreed upon they shall immediately thereupon enter into a written lease with each other for all of said structure when completed, with the exceptions above noted, provided, that the terms, conditions and details of said lease can be mutually agreed upon between the parties hereto within 10 days after the written contract for the construction of said structure has been entered into by the first party and within 10 days after the actual construction has been commenced.

“4. That said lease shall provide, among other things, that as soon as the hotel, rooms and apartments in said structure are ready for occupancy by the second parties, the second parties will at their own cost, now estimated at \$150,000.00, provide and place in said structure such furniture, fixtures and equipment as shall be suitable, proper and necessary to furnish and equip the same as a first class hotel and apartment building.

“5. That the rental for said structure when completed, with the exceptions noted above, shall be as follows:

5% of gross receipts from food sales

10% of gross receipts from liquors, wines and beer sales

30% of gross receipts from hotel, rooms and apartments

All rentals payable monthly.

Provided, that in the event the said percentage of gross receipts shall not equal monthly—

For coffee shop, dining room and

kitchen,\$ 600.00

For lounge, 1000.00

For Skyroom 333.33

For Mezzanine Floor banquet room, ... 150.00

then in such case, the second parties shall make up and pay to the first party the deficiency on any of said four classifications so failing. [954]

“If the lease is to include the garage, then the second parties shall pay monthly 10% of the gross

garage receipts, or, if the first party leases the garage to a third person, the second parties are to have the privilege of garage service for their guests on terms to be mutually agreed upon.

“6. That said lease shall provide that the second parties are to execute and deliver to the first party a first chattel mortgage covering the furniture, fixtures and equipment placed in the hotel and apartments as aforesaid, to secure the rental payments as provided in said lease.

“7. That after said lease is executed between the parties hereto and if the second parties fail either to provide and place said furniture, fixtures and equipment in said hotel, rooms and apartments as aforesaid, or if they fail to execute and deliver said chattel mortgage as such security as herein required, then the cash so deposited with the first party shall belong absolutely to the first party as a consideration for her entering into this agreement.

“8. If after said lease is executed between the parties hereto as above provided, and the second parties provide and place said furniture, fixtures and equipment in said hotel and apartments as aforesaid, and second parties execute and deliver said chattel mortgage as security as herein required, then the cash so deposited with the first party shall belong to and be delivered to said second parties by the first party.

“9. The second parties as a part of said lease, will guarantee to said first party that the total annual income from the entire building which the

first party will receive will be in an amount at least sufficient to cover payments required of the first party for taxes, upkeep, insurance, interest on borrowed money, and to amortize the cost of said building within said lease period.

“10. The said lease shall contain all necessary provisions to fully effectuate the intent and purposes of the parties hereto as stated in this preliminary agreement and also to definitely set forth all usual or necessary conditions to the end that the rights and interests of each party shall be properly conserved and protected.

“11. Time is of the essence of each and every term, covenant and agreement herein mentioned.

“In witness whereof, the parties hereto have hereunto set their hands, the day and year first above written.

/s/ IRENE GLADYS MAPES,
First Party

Witnesses to the Signature of the First Party:

/s/ B. A. YPARRAGUIRE

/s/ H. R. COOKE

/s/ CHARLES W. MAPES, JR.,

/s/ P. G. DENSON,

Second Parties

Witnesses to the Signature of Charles W. Mapes, Jr.:

/s/ H. R. COOKE

Witnesses to the Signature of P. G. Denson:

/s/ H. R. COOKE [955]

The above agreement though signed by plaintiff on October 4, 1945, has been referred to as the agreement of September 24, 1945.

By their Answer the defendants among other things admit the following: The Jurisdictional allegations of the Complaint; status of defendants; the organization and existence of the Chas. W. Mapes Company, a co-partnership; that defendant Irene Gladys Mapes, was, on the 24th day of September, 1945, seized in fee of the lands and premises described in the said agreement of September 24, 1945; that defendant Charles W. Mapes, Jr., is the son of defendant Irene Gladys Mapes and said Charles W. Mapes, Jr., has declined and refused, and continues to decline and refuse, to join as a party plaintiff herein.

The Court, having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted for decision, now finds the facts and states conclusions of law as follows:

Finding of Fact

1. That there was no combination or confederation between the defendant Irene Gladys Mapes, Charles W. Mapes, Jr., and Gloria Mapes and the partnership referred to in the Amended Complaint to do any unlawful act or lawful act by unlawful means for the purpose of defeating the plaintiff or depriving him of any rights or equities to which he was entitled by virtue of the above set forth agreement, or to bring about a repudiation of said agreement; that the interests in this action of said

Charles W. Mapes, Jr., are antagonistic and adverse to the plaintiff.

2. That the deed of convenience of November 6, 1945, by Irene Gladys Mapes to herself as Mrs. Charles W. Mapes, Charles W. Mapes, Jr., and Gloria Mapes as co-partners doing business under the name of Chas. W. Mapes Company of Reno, Nevada, of the lands and premises described in said agreement of September 24, 1945, was made with the knowledge of all the defendants, including Gloria Mapes, of the existence of said agreement of September 24, 1945. [956]

3. That on or about the 24th day of September, 1945, the above named plaintiff and the above named defendants entered into the written agreement above set forth, Exhibit "C".

4. That plaintiff did not, at the request of the defendant Irene Gladys Mapes, or otherwise, engage an architect and contractor to construct the hotel building, the subject matter of this action; that the plaintiff, prior to the bringing of this action, conferred with the architect and contractor employed on the work and with the defendants on numerous occasions, some of said occasions being as follows: September, 1945, at the Fielding Hotel, San Francisco, California, and again August 14, 1945, at the Sir Francis Drake Hotel, San Francisco, California; present, Irene Gladys Mapes, Charles W. Mapes, Jr., plaintiff P. G. Denson and Francis Harvey Slocum, architect. Plans and sketches of the building were discussed on each of these occasions. Sug-

gestions as to plans and alterations of same were made by parties present including plaintiff, resulting in the adoption of certain of the suggestions of the plaintiff including increasing size of hotel room, elimination of one room on river frontage, increasing size of clothes closets connected with—rooms, installation of three elevators in building instead of two and the changes in “Skyroom.”

5. That the plaintiff was not requested by the defendants, or any of them, to secure a loan in any amount for the defendants for the purpose of financing the construction of said hotel building or for any other purpose; that plaintiff did attempt to assist in the procuring of a loan for the purpose of financing the construction of the contemplated hotel building by interviewing the officials of a bank and insurance company.

6. That plaintiff obtained the plans and specifications in evidence from various firms on furnishings, equipment, accessories and supplies to be installed in the said hotel.

7. That plaintiff did not sell at considerable or any financial sacrifice the hotel of which he was the sole owner and proprietor, namely, the Johnson Hotel, Visalia, California.

8. That the said agreement, Exhibit “C”, was not prepared by the attorney for the defendants but was formulated from a document prepared in the office of plaintiff’s attorney and altered as a result

of conferences between plaintiff, defendant Irene Gladys Mapes, and her attorney, H. R. Cooke; and after such revision the agreement was executed by the defendants, Irene Gladys Mapes and Charles W. Mapes, Jr., and forwarded to plaintiff at Los Angeles, California, and thereafter signed and executed by the plaintiff in the office of the attorney for the defendants.

9. That since the execution of said agreement plaintiff has been ready and willing to receive from defendant Irene Gladys Mapes a lease of said hotel structure containing the terms which were settled and agreed upon by said agreement of September 24, 1945, but that it is impossible to determine whether plaintiff would be willing to execute a lease tendered by defendants after the further negotiation as to terms conditions and details provided for in the agreement.

10. That from the date of the execution of said agreement up to and including on or about the 1st day of April, 1946, defendants Irene Gladys Mapes and Charles W. Mapes, Jr., and plaintiff have been conferring at various times and intervals and during said time treated and considered said agreement in full force and effect; that defendants made no representation by word, conduct, or otherwise, that a lease would be tendered plaintiff without further discussion as to the terms, conditions and details of said lease not fixed by said agreement.

11. That on or about April 1, 1946, plaintiff and defendant Charles W. Mapes, Jr., met with an

interior designer at Oakland, California, and examined and discussed plans for furniture and interior designs prepared by a furniture dealer at request of plaintiff; and that during the month of January, 1946, plaintiff requested from a dealer designs and prices for dining rooms, kitchens, bars, and other matters appertaining [958] to hotel equipment within the knowledge of the defendants.

12. That from the execution thereof to and including about the 10th day of April, 1946, the defendants retained \$10,000.00 deposited by plaintiff at the time of the execution of said contract; that the return to plaintiff of said \$10,000.00 was not offered to plaintiff until about the 10th day of April, 1946; that between the date of the execution of the agreement and April 10, 1946, the defendants, or either of them, did not, by word, act or conduct, inform the plaintiff that they would not enter into and execute a lease on said premises.

13. That the violation of the so-called time limitations in said agreement was the fault of both parties; that no further discussion as to terms, conditions and details of said lease other than those fixed in said agreement was ever requested or had by either of the parties from the execution of the contract to April 10, 1946.

14. That on or about April 10, 1946, the defendants, without good cause, repudiated said written agreement and declined and refused further performance on their part under it and stated to

plaintiff that no lease would be tendered, granted or entered into as contemplated by said agreement.

15. That Irene Gladys Mapes would not enter into an agreement for a lease of said premises, or a lease thereof, with plaintiff unless her son, defendant Charles W. Mapes, Jr., was associated with plaintiff in such agreement or lease.

16. That the deposit of \$10,000.00 cash made by plaintiff was accepted by the defendant Irene Gladys Mapes as a full compliance with the provision of the contract requiring the plaintiff and the son of Irene Gladys Mapes, defendant Charles W. Mapes, Jr., to deposit \$20,000.00 cash as guarantee of the good faith of plaintiff and the said defendant Charles W. Mapes, Jr.

17. That prior to April 10, 1946, nor any other time, was it ever considered by the parties, that plaintiff and said defendant Charles W. [959] Mapes, Jr., were to be granted a lease of the said premises upon the basis of 30% of net earnings to plaintiff and 70% to said defendant Charles W. Mapes, Jr., but it was at all times contemplated by the parties that the net earnings of the contemplated lease would be shared equally by plaintiff and defendant Charles W. Mapes, Jr.

From the Foregoing Facts, the Court Concludes:

Conclusion of Law

That the plaintiff is not entitled to a decree of this Court for the specific performance of the agreement admitted in evidence herein as Exhibit "C",

and to compel the execution of a lease to plaintiff alone would be making a new contract for the parties, and this the Court cannot do.

The conclusions which I have reached are based upon the following reasons and matters of law:

An examination of the record will disclose that while the defendants, by their acts and conduct subsequent to the execution of said agreement, have waived the time limitations set forth in said agreement, and particularly those in Paragraphs 3 and 11 therein, the remaining provisions of Paragraph 3, and other stipulations of the contract, have not been waived. Before a lease was to be executed, a further discussion of terms was to be had, a discussion of terms and conditions other than those settled in the contract. No lease was to be executed until these additional terms, conditions and details were worked out. No further discussion or further agreement as to terms, conditions and details of lease has occurred.

In *Cochrane v. Justice Mining Co.*, 26 Pac. 780, the Supreme Court of Colorado held:

“Under the authorities, to create a valid contract of lease but few points of mutual agreement are necessary; First, there must be a definite agreement as to the extent and bounds of the property leased; Second, a definite and agreed term; and Third, a definite and agreed price of rental, and the time and manner of payment. These appear to be the only essentials; the others, such as the covenant for the peaceful possession on the part of the lessor

diligent, proper workman-like and continuous working with view to best results, both present and prospective, on the part of the lessee; and where, as in this case, the [960] rental is a share or percentage of the proceeds, the disposition of the ore to the best advantage, the keeping of accurate and honest accounts and making honest returns, are secondary and implied covenants, growing out of the principal agreement."

The contract under discussion here is definite as to the description of the property, the term, the price of rental and the time and manner of payment, but it is not complete. In this respect it differs from the contracts ordered specifically enforced in *Cochrane v. Justice Mining Co.*, 26 Pac. 780; *Dondero v. Turrillas*, 59 Nev. 374, 94 Pac. 2d 276, and other cases cited, in there is here a definite provision that further negotiations were to be had and that no lease was to be executed except as a result of the required further negotiation as to terms, conditions and details of contemplated lease or other than those established by the agreement.

The contract involved in the cases cited above contained no provisions looking to further negotiations. The Circuit Court of Appeals of the Sixth Circuit in *Dan Cohen Realty Co. v. National Savings & Trust Co.*, 125 F. 2d 288, held that:

"An agreement to enter into a lease should not be enforced if any of the terms of the lease are left open to future settlement. Until the minds of the parties have met on all material matters, a court should not direct specific performance."

And from the Eighth Circuit we find the case of *Scholtz v. Northwestern Mut. Life Ins. Co.*, decided March 13, 1900, in 100 F. 573. There the Court declared the law to be as follows:

“It may be conceded that an agreement to enter into a lease will neither be enforced in equity nor at law if it appears from the face of the agreement that any of the terms of the lease, no matter how unimportant they may seem to be, are left open to be settled by future conferences between the lessor and lessee. In such cases there is no complete agreement; the minds of the parties have not fully met; and, until they have, no court will undertake to give effect to those stipulations that have been settled, or to make an agreement for the parties respecting those matters that have been left unsettled.”

In the *Scholtz* case the contract contained no provision such as here for further discussion of terms, conditions and details.

Numerous objections to the introduction of evidence were made on behalf of defendants and overruled on the theory that since the right to specific performance is a matter resting largely in the sound discretion of the court, courts have always indulged in great [961] latitude in hearing evidence to determine whether, in equity or good conscience, performance should be enforced. 58 C. J. 1191.

Another consideration moves the Court to deny specific performance. If specific performance were decreed, the Court would be compelling antagonistic parties to form a partnership or a relation in the

nature of a partnership in the control and management of a large hotel. The possibility of successful operation of this large undertaking would be jeopardized. The record unquestionably indicates antagonism between plaintiff and defendant Charles W. Mapes, Jr., and between plaintiff and defendant Irene Gladys Mapes. As an illustration of the principle involved, the following is quoted from the opinion of the Supreme Court of the United States in *Hyer v. Richmond Traction Co.*, 168 U. S. 471, 18 S. Ct. 114, on p. 118:

“But, beyond these relations of the public to the enterprise, courts are not often wont to compel parties to unite interests and work together. And here it may be well to notice that the contract was not one in terms for a partnership in the management of the railway, but only one for division of the profits. The parties stipulated to cooperate in securing the franchise, and to divide equally the profits, but left the question of control and management unsettled. * * * It may, however, be conceded that there is an implication of joint ownership as well as of joint interest in the management, and in the profits arising therefrom, and thus it may be said that the contract was really one for a partnership. It is seldom that a court of equity will decree that a partnership which has been agreed upon shall be carried into effect. More frequently is it called upon to release parties from partnership agreements on the grounds that their antagonism prevents the fulfillment of the purposes of the partnership, and it would seem like a contradiction to force

antagonistic parties to form a partnership when it is one of the recognized rules of equity that such antagonism is ground for dissolving a partnership already existing.”

Let Judgment be entered accordingly.

Dated: At Reno, Nevada, this 23rd day of April, 1947.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed April 24, 1947.

[Title of District Court and Cause.]

STATEMENT OF DOCKET ENTRIES
OF APRIL 24, 1947

1. Filing Decision and Findings of Fact and Conclusions of Law.
2. Entering Judgment pursuant to said Decision, etc.
3. Entering order following judgment be entered.

Judgment: That the plaintiff is not entitled to a decree of this Court for the specific performance of the agreement admitted in evidence herein as Exhibit “C.”

Dated June 26, 1947.

AMOS P. DICKEY,
Clerk.

By J. P. FODRIN,
Deputy. [963]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that P. G. Denson, the above-named plaintiff, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment and decree made and entered in the above-entitled suit on the 24th day of April, 1947, in favor of the above-named defendants and against the above-named plaintiff, and from the whole thereof.

SAMUEL PLATT,
322 First National Bank
Bldg., Reno, Nevada.

JOHN S. SINAI,
323 First National Bank
Bldg., Reno, Nevada.
Attorneys for Appellant.

[Endorsed]: Filed May 24, 1947. [964]

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Know All Men By These Presents, that we, Peter G. Denson of the City and County of San Francisco, State of California, as Principal, and the London & Lancashire Indemnity Company of America, a corporation organized under the laws of the State of New York and duly qualified to transact a surety business in the State of Nevada, as Surety, are held and firmly bound unto the above-named defendants, Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, Charles W. Mapes, Jr., Gloria Mapes, and Chas. W. Mapes Company, a co-partnership, in the sum of Two Hundred Fifty (\$250.00) Dollars, lawful money of the United States of America, to be paid to the said Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, Charles W. Mapes, Jr., Gloria Mapes, and Chas. W. Mapes Company, a co-partnership, [972] for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of May, 1947.

Whereas, on the 21st day of May, 1947, a judgment and decree was rendered against the plaintiff, Peter G. Denson, in the above-entitled action, and

the said plaintiff and appellant, Peter G. Denson, appeals to the United States Circuit Court of Appeals for the Ninth Circuit.

Now, Therefore, the condition of this obligation is such that if the said Peter G. Denson shall prosecute an appeal with effect and pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment be modified, then the above obligation to be void, otherwise to remain in full force and effect.

Signed and sealed and dated at Reno, Nevada, this 21st day of May, 1947.

/s/ PETER G. DENSON,
Principal.

[Corporation Seal]

LONDON & LANCASHIRE IN-
DEMUNITY COMPANY OF
AMERICA,

By /s/ FRANK HASSETT,
Attorney-in-Fact.
Surety.

[Endorsed]: Filed May 24, 1947.

State of Nevada,
County of Washoe—ss.

On this 21st day of May, A. D. one thousand nine hundred and forty-seven, personally appeared before me, the undersigned, a Notary Public in and for said County of Washoe, Peter G. Denson, known (or proved) to me to be the person described in and who executed the annexed instrument, who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mention.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my office in the County of Washoe, the day and year in this Certificate first above written.

[Notarial Seal] MARIE DOONER,
Notary Public in and for the County of Washoe,
State of Nevada.

My commission expires April 10th, 1951.

State of Nevada,
County of Washoe—ss.

Frank Hassett, being first duly sworn on oath, says that he is agent and Attorney-in-Fact of London & Lancashire Indemnity Company, a corporation, surety on the within and foregoing bond. That said surety is a corporation organized and existing under and by virtue of the laws of the State of New York, and doing business in the State of Nevada; that said surety has complied with all the laws of the State of Nevada with respect to foreign corporations doing business within said State; that he is duly authorized to execute and deliver the foregoing obligation; that said Company is authorized to execute the same, and has complied with the laws of the State of Nevada in reference to becoming sole surety upon bond, undertakings and obligations.

/s/ FRANK HASSETT.

Subscribed and sworn to before me this 21st day of May, 1947.

[Notarial Seal]

/s/ MARIE DONNER,
Notary Public.

My commission expires April 10, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S.
DISTRICT COURT

United States of America,
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of *P. G. Denson, Plaintiff, vs. Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, Charles W. Mapes, Jr., Gloria Mapes and Chas. W. Mapes Company, a co-partnership, Defendants, No. 552, on the civil docket of said Court.*

I further certify that the attached transcript, consisting of 983 typewritten pages number from 1 to 983, inclusive, contains a full, true and correct transcript of the proceedings in said cause and of all papers filed therein, together with the endorsements of filing thereon, as set forth in "Designation of Contents of Record on Appeal" and "Designation of Additional Portions of Record, Proceedings and Evidence to be Included in Record on Appeal," filed May 24, 1947, and June 2, 1947, respectively, all of which are filed in this [982] cause and made a part of the transcript attached thereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

And I further certify that the cost of preparing and certifying to said record, amounting to \$118.70, has been paid to me by Samuel Platt, Esq., one of the attorneys for appellant.

Witness my hand and the seal of said United States District Court this 18th day of July, 1947.

[Seal] AMOS P. DICKEY,
Clerk, U. S. District Court.

[Endorsed]: No. 11692. United States Circuit Court of Appeals for the Ninth Circuit. P. G. Denson, Appellant, vs. Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, Charles W. Mapes, Jr., Gloria Mapes and Chas. W. Mapes Company, a co-partnership, Appelles. Upon appeal from the District Court of the United States for the District of Nevada.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Filed July 21, 1947.

United States Circuit Court of Appeals
For the Ninth Circuit

11692

P. G. DENSON,

Appellant,

vs.

IRENE GLADYS MAPES, also known as Mrs.
Charles W. Mapes, Charles W. Mapes, Jr.,
Gloria Mapes, and Chas. W. Mapes Company,
a co-partnership,

Appellees.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
THE APPEAL, AND DESIGNATION OF
PARTS OR RECORD UPON WHICH THE
APPELLANT INTENDS TO RELY.

Point 1.

The trial court erred in denying plaintiff-appellant relief by way of specific performance, for the reason that the findings of fact of the trial court sustain every material allegation of plaintiff's amended complaint, as follows:—

1. That the parties entered into a written agreement for the leasing of the hotel premises. (Decision and Findings, pg. 5, par. 3).

2. That since the execution of the agreement, plaintiff has been ready and willing to receive

from the defendant, Irene Gladys Mapes, a lease of said hotel structure containing the terms which were settled and agreed up by said agreement. (Decision and Findings, pg. 6, par. 9).

3. That from the date of the execution of the agreement, up to and including about April 1, 1946, all the parties treated and considered the agreement in full force and effect. (Decision and Findings, pg. 6, par. 10).

4. That the plaintiff and defendant, Charles W. Mapes, Jr., at various times examined and discussed plans for furnishing and equipping the hotel as provided in the agreement. (Decision and Findings, pg. 6, par. 11).

5. That plaintiff deposited \$10,000.00 with defendant, Irene Gladys Mapes, as a guarantee of good faith, and which was accepted by her as a full compliance with the provisions of the contract. (Decision and Findings, pg. 7, par. 16).

6. That this deposit was retained and was not offered to plaintiff until about April 10, 1946; and from the date of the contract up to April 10, 1946, none of the defendants, by word, act, or conduct, informed the plaintiff they would not execute a lease. (Decision and Findings, pg. 7, par. 12).

7. That on or about April 10, 1946, the defendants, without good cause, repudiated said written agreement and declined and refused further performance of their part under it, and stated to

plaintiff that no lease would be tendered, granted or entered into as contemplated by said agreement. (Decision and Findings, pg. 7, par. 14).

8. The time limitations of the agreement have been waived by all parties. (Decision and Findings, pg. 7, par. 13, and pg. 8, lines 16-20).

9. That the defendant, Irene Gladys Mapes, upon the execution of the agreement, was represented by an attorney at law. (Decision and Findings, pg. 6, lines 9-10).

10. It was always contemplated that the net earnings of the contemplated lease would be shared equally by plaintiff and defendant, Charles W. Mapes, Jr. (Decision and Findings, pg. 8, lines 9-10).

11. The contract under discussion here is definite as to description of the property to be leased, the term, the price of rental and the time and manner of payment. (Decision and Findings, pg. 9, lines 5-7).

These findings, alone, entitle plaintiff to a decree of specific performance.

Point 2.

The trial court finds that the defendants without good cause repudiated said written agreement. Neither law nor equity upholds or sanctions a breach or repudiation of a written contract, without good cause. The trial court erred in not having ordered and entered a decree in favor of the plaintiff for the specific performance of the agreement.

Point 3.

The defendant, Irene Gladys Mapes, having repudiated the agreement without good cause, was, and is obligated to tender the plaintiff a lease containing the material and essential provisions as provided in the agreement, and such usual and customary provisions as contemplated by the agreement. The trial court erred in not having so decreed.

Point 4.

The plaintiff fully performed. The defendant, Irene Gladys Mapes, breached and repudiated before performance on her part. It was error for the trial court to have sustained the defendant in her inequitable breach, and to have penalized the plaintiff for his faithful performance.

Point 5.

The contract contains the material and essential elements, provisions and covenants to be embodied in the lease. In equity, such a contract should be specifically enforced. The trial court erred in denying this relief.

Point 6.

The contract clearly shows that it was the intention of the parties that the lease should contain the material and essential elements therein specifically indicated, and that only incidental matters and usual and customary conditions to effectuate this intent should be further negotiated. Such a contract should be specifically enforced in equity. The trial court erred in not so decreeing.

Point 7.

The contract is complete in its essential terms and it was the intention of the parties that they should be bound by it. The execution of the lease was a formality "to fully effectuate the intent and purposes of the parties hereto as stated in this preliminary agreement." (Contract, par. 10). The trial court, therefore erred, in not decreeing specific performance.

Point 8.

The defendants, having repudiated the contract without cause, before tendering a form of lease or negotiating therefor, should be obligated in equity, so to do, by court decree. The court through the equitable power of supervision should have decreed that the lease so tendered should "fully effectuate the intent and purposes of the parties hereto as stated in this "preliminary agreement." The trial court erred in denying this relief to the plaintiff.

Point 9.

The trial court by its decree, brings, in error, the interposition of equity, to support the defendant Irene Gladys Mapes in her established and conceded unwarranted violation of the contract.

Point 10.

The contract is complete and definite in itself. It contains no condition that it shall become definite, final or absolute only upon the happening of some

future contingency. It is a contract in praesenti, for which the plaintiff was obligated to deposit, and did deposit, Ten Thousand Dollars in cash as an evidence of good faith. The trial court erred in not compelling the defendants, by decree to perform.

Point 11.

The fact that the contract provided for the formal and later execution of a lease, did not negative the existence of the contract, the terms of which had been assented to and agreed upon. The trial court erred in not so decreeing.

Point 12.

All the terms, covenants and conditions of the contract, agreed up, are complete, definite and certain. The trial court was in error in decreeing otherwise. The additional conditions to be incorporated in the lease, the parties have agreed, should be made certain and complete by negotiation. They provided the method by which certainty and completeness was to be reached. They acted within the rule of equity that "that which may be made certain is certain." The trial court erroneously failed to follow this well-established maxim of equity. The defendants, captiously and without cause, having repudiated the contract, which contained the essential elements of the lease, and refused to negotiate, the court should have ordered them to negotiate,

and on failure of which the court should have decreed the additional, reasonable, subordinate and customary provisions of the lease, as contemplated by the contract. "Equity regards as done that which ought to be done."

Point 13.

The trial court's conclusion, (Decision and Findings, pg. 10, line 7) that specific performance should be denied because the parties were antagonistic, is erroneous and not supported in equity. The court erroneously concluded that this is a suit to enforce an agreement to form a partnership. The present suit is for a decree to compel the performance of an agreement to lease. Under the facts of this case, the plaintiff's rights may not be destroyed because of the association of a co-lease, who is a son of the principal defendant, and who joined with his mother "for no cause" inequitably and unconscionably, to defeat plaintiff of his just rights.

Point 14.

The evidence and the findings establish conclusively that the defendants acted with the utmost bad faith. The equities are overwhelmingly with the plaintiff. The trial court's finding (*supra*) that the defendants repudiated the agreement without cause, is a plain conclusion that the agreement is still in full force and effect. Why should not the

defendants be compelled to perform? In support of the contention that the defendants acted with the utmost bad faith appellant refers to the evidence of all the witnesses, detailed extracts from which by page and number will be specifically designated later in appellant's brief, after receipt of the printed record.

Point 15.

The trial court erred in failing to conclude that the material and essential provisions to be contained in the lease were agreed upon with certainty, definiteness and completeness, and that it was the intention of the parties later to negotiate for minor, customary and subsidiary conditions "to fully effectuate the intent and purpose of the parties" to the contract. (Quoted part from Agreement, pg. 3, par. 10 Court's Opinion). That the contemplation of a formal lease did not destroy the completeness and certainty of the contract.

Point 16.

It was the plain duty of the defendant owner of the property to have submitted a form of lease to the plaintiff for his consideration, before her sudden repudiation of the agreement without good cause. The plaintiff was foreclosed by the unwarranted act of repudiation from his right, guaranteed by the agreement, to give consideration to any proposed terms to be embodied in the lease. The trial court

by denying plaintiff relief by way of specific performance, erroneously deprived plaintiff of this right, in the face of the court's finding that the agreement was still in full force and effect.

/s/ SAMUEL PLATT,
/s/ JOHN S. SINAI,
Attorneys for Appellant.

Service of the within and foregoing admitted, by copy, this 6th day of June, 1947.

/s/ H. R. COOKE,
/s/ JOHN D. FUHR, Jr.,
Attorneys for Appellees.

[Endorsed]: Filed July 21, 1947.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

The above named appellant hereby designates the following portions of the record, proceedings and evidence herein to be contained in the Record on Appeal:

1. Plaintiff's Amended Complaint.
2. Defendant's Answer thereto.
3. Trial Court's Findings of Fact and Conclusions of Law, Opinion, together with a direction of entry of judgment thereon.

4. Judgment and decree appealed from.
5. Transcript of Testimony reported by the Court Reporter.
6. Depositions of Leon Huckins, Ruth Mason, Douglas Stone, George T. Thompson, Harvey M. Toy, Dan E. London, Will P. Taylor, S. P. Barash, and Thomas E. Hull, offered and admitted in evidence.
7. Notice of Appeal with date of filing.
8. Cost Bond on Appeal.
9. All exhibits excluded.
10. Statement by the Appellant of the points on which he intends to rely.

Dated this 6th day of August, 1947.

/s/ SAMUEL PLATT,

Attorney for Appellant.

Service, by copy, of the within and foregoing Designation of Contents of Record on Appeal is hereby admitted this 6th day of August, 1947.

JOHN D. FUHRER, Jr.,

/s/ H. R. COOKE,

Attorneys for Appellees.

[Endorsed]: Filed August 8, 1947.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PORTIONS
OF RECORD, PROCEEDINGS AND EVIDENCE
TO BE INCLUDED IN RECORD
ON APPEAL

The appellees above named hereby designate the additional portions of the Record, proceedings and evidence to be included in the Record on Appeal, viz.:

1. Notice of Motion by Defendants to Dismiss and, Subject thereto, to Strike Portions of Plaintiff's Amended Complaint.

2. That the Transcript of Testimony reported by the Court Reporter shall include all objections, argument and rulings thereon as reported in shorthand by the official Court Reporter.

Dated: August 9, 1947.

/s/ H. R. COOKE,
JOHN D. FUHHR, Jr.,
Attorneys for Appellees.

Services, by copy, of the foregoing Designation admitted this 9th day of August, 1947.

/s/ SAMUEL PLATT,
Attorney for Appellant.

[Endorsed]: Filed Aug. 11, 1947.

